

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION  
AT PIKESVILLE

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PAINTSVILLE HOSPITAL COMPANY,  
LLC D/B/A PAUL B. HALL  
REGIONAL MEDICAL CENTER,  
Plaintiff,

v.

NATIONAL LABOR RELATIONS BOARD

and

PHILIP MISCIMARRA,  
in his official capacity as  
Chairman of the National Labor Relations  
Board,

Defendants

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Civil Action No.  
7:17-cv-00056-KKC

**NLRB'S MOTION TO TRANSFER VENUE  
AND MEMORANDUM IN SUPPORT**

This matter is before the Court on the Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction to enjoin the National Labor Relations Board, *et al.*, (collectively, NLRB) from proceeding with an unfair labor practice hearing that is scheduled to begin in Beaver, West Virginia, *this coming Monday, March 27, 2017*. Plaintiff has failed to meet the exacting standards for such relief: as will be shown below, they cannot show a likelihood of success on the

merits because this Court lacks jurisdiction to enjoin an NLRB proceeding; nor have Plaintiff shown irreparable harm. Indeed, as will be shown, their action is predicated on an overwrought reading of the relief sought in the unfair labor practice proceeding.

## **I. BACKGROUND**

The administrative hearing that Plaintiff seek to enjoin follows over a year of litigation regarding unfair labor practices alleged to have been committed by hospitals affiliated with Community Health Systems, Inc. (“CHSI”) and Community Health Systems Professional Services Corporation (“CHSPSC”). Two separate consolidated NLRB cases are entailed in this litigation, commonly referenced as CHS I and CHS II. The first, CHS I, originated with an administrative complaint issued on October 19, 2015, based on charges filed against seven individual hospitals located in Ohio, California, West Virginia, and Kentucky.<sup>1</sup> CHSI and CHSPSC are named in the CHS I complaint as

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<sup>1</sup> The named Respondent Hospitals in the CHS I complaint are: DHSC, LLC d/b/a Affinity Medical Center (located in Massillon, Ohio); Hospital of Barstow, Inc. d/b/a Barstow Community Hospital (located in Barstow, California); Bluefield Hospital Company, LLC d/b/a/ Bluefield Regional Medical Center (located in Bluefield, West Virginia); Fallbrook Hospital Corporation d/b/a Fallbrook Hospital (located in Fallbrook, California); Greenbrier, VMC, LLC d/b/a Greenbrier Valley Medical

co-Respondents, on the basis of their alleged single- and/or joint-employer status with the individually named Respondent Hospitals. Hearings in CHS I have been ongoing since February 29, 2016, and are scheduled to continue during this year.<sup>2</sup> Exh. 1, Binstock Decl. ¶6

After the complaint issued in CHS I, additional charges were filed against five of the CHSI affiliated hospitals that were named in the earlier complaint.<sup>3</sup> Exh. 1, Binstock Decl. ¶7. Additionally, as early as January 2016, after the NLRB learned that CHSI was planning to, and ultimately did, shift ownership of certain hospitals named in the CHS I

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Center (located in Ronceverte, West Virginia); Jackson Hospital Corporation d/b/a Kentucky River Medical Center (located in Jackson, Kentucky); and Watsonville Hospital Corporation d/b/a Watsonville Community Hospital (located in Watsonville, California). Exh. 2, CHS I Consolidated Complaint, pp. 20-21, ¶8(a) – (g).

<sup>2</sup> Just prior to the commencement of the 2016 hearing in Cleveland, counsel for Plaintiff in the instant case, Robert Hudson and Michael Nitardy, sought a Temporary Restraining Order on behalf of another CHSI affiliated hospital, Affinity Hospital, LLC, d/b/a Grandview Medical Center (“Grandview”), in the United States District Court for the Northern District of Alabama, making virtually identical arguments as those made by in the instant action. Exh. 3, Grandview Complaint. The court in that matter denied the motion for a Temporary Restraining Order in open court. Exh. 4, Grandview Docket Report. Grandview withdrew their complaint the same day their motion for a Temporary Restraining Order was denied. *Id.*

complaint to Quorum Health Corporation (“QHC”), and the management functions for these facilities to QHC affiliate, QHCCS, LLC (“QHCCS”) the NLRB had been providing notice of these unfair labor practice charges to QHS and QHCCS. Exh. 1, Binstock Decl. ¶9. The NLRB moved to consolidate these newer allegations with the ongoing administrative proceedings in CHS I and to amend the complaint to add QHC and QHCCS as named parties, alleging their status as successor employers.<sup>4</sup> Exh. 1, Binstock Decl. ¶8. Ultimately, the administrative law judge presiding over the CHS I case denied the General Counsel’s motion to consolidate the newer allegations and to amend the complaint to name QHC and QHCCS. *Id.* Consequently, on September 26, 2016, the NLRB issued a separate Consolidated Complaint in CHS II, which is premised on the newer charges. Exh. 1, Binstock Decl. ¶12. The complaint in CHS II names not only CHSI, CHSPSC, and the five individually named hospitals, it also names QHC and QHCCS as successors to CHSI and CHSPSC. *Id.* On December 6,

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<sup>4</sup> Under relevant principles of labor law, a successor that acquires and operates an employer with notice of the employer’s unfair labor practice liability is liable for remedying the employer’s prior unfair labor practices. *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 176 (1973).

2016, the NLRB issued a notice of hearing scheduling the CHS II case for hearings to begin on March 27, 2017, and subsequently designated the location of the hearing in Beaver, West Virginia. Exh. 1, Binstock Decl. ¶13-17.<sup>5</sup>

The Board will seek in the unfair labor practice proceeding to establish that the named individual hospital Respondents in the CHS II case engaged in conduct prohibited by the National Labor Relations Act (the Act), 29 U.S.C. § 151 *et seq.* Those proceedings will further determine whether liability should extend to Respondents CHSI and CHSPSC as single- or joint- employers, and to Respondents QHC and QHCCS as successor employers under established principles of labor law. NLRB Rules & Regulations, 29 CFR § 101.10.

The NLRB may seek to extend liability to other entities as successors, single, or joint employers in subsequent administrative

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<sup>5</sup> Additional hearings in the CHS II case have been scheduled for May 30 – June 2 and/or June 5 – 6 for the continuation of the Bluefield trial; July 20-21 for the Watsonville (California) trial; July 24- 27 for Barstow (California) trial; October 30 – November 10 for Greenbrier (West Virginia) trial; additional trial dates have yet to be scheduled for Ohio portion of the trial and in Nashville for the single/joint employer and successor issues. Meanwhile, CHS I continuing trial dates are scheduled for April 18-19 in Bluefield; May 1-12 in Barstow; and August 21-31 in Nashville for the single/joint employer allegations against CHSI and CHSPSC.

compliance proceedings, but only if the new entity is named as a respondent in those compliance proceedings. The same is true if contempt proceedings are brought against new entities that have acted “in concert or participation” with the previously named respondent in committing violations of court orders. In either situation, the newly-named entity will be named as a party and given notice and full rights to participate and defend itself. Additionally, and with particular relevance to the issues raised by Plaintiff here, in the case of so-called “Golden State” successors,<sup>6</sup> as QHC and QHCCS, are alleged to be here, the only liability is to remedy the violations found against their predecessor, CHSI; successors are not named or held bound by the “cease and desist” language against future violations of the NLRA. See below.

From this, several obvious flaws in Plaintiff’s contentions emerge. First, as it acknowledges, neither Plaintiff nor any of the so-called “Unnamed Entities” they reference, are named parties to the pending unfair labor practice proceedings. No allegations or charges have been made and no complaint has issued seeking to hold either Plaintiff or

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<sup>6</sup> See footnote 4, *supra*.

any other “Unnamed Entity” liable – directly, indirectly, or otherwise – for any of the violations alleged in the current unfair labor practice proceedings. Plaintiff asserts no role or direct knowledge about any of the evidentiary issues to be raised or litigated with respect to alleged violations that transpired at any of the individual Respondent Hospitals. More particularly, they make no representation as to what, if any, information or defense they would make as to the particular unfair labor practice violations that occurred at these facilities, which will be the subject of the administrative hearing that they are seeking to have enjoined.

Second, Plaintiff errs in asserting that simply by naming Respondents QHC and QHCCS and alleging that these entities are successor employers with the Respondent Hospitals, the complaint and trial necessarily will result in imposing liability upon Plaintiff. We presume that Plaintiff is not intending to concede that it or the 138 other affiliates of QHC or QHCCS currently stand in a “single employer” relationship with either QHC or QHCCS. If it is, then it is conceivable that they could be held liable at some point in the future for violations committed by QHC and QHCCS. Even in that circumstance,

however, Plaintiff would need to be named in a proceeding before being held accountable, as we discuss in greater length below.

Third, QHC and QHCCS, the corporate parent and affiliate of Plaintiff, respectively, have had notice of the unfair labor practice complaint for well over six months and have been aware of the scheduled administrative hearing for three-and-a-half months. The parties have been actively preparing for trial throughout that time, and much time and effort has gone into the planning and scheduling of these proceedings. See Exh. 1, Binstock Decl. Plaintiff have offered no reason for waiting until the cusp of the first hearing date to litigate these matters and seek injunctive relief, much less why they do so under the tight strictures of seeking a temporary restraining order.

## **II. THE STANDARDS FOR A TEMPORARY RESTRAINING ORDER ARE NOT MET HERE**

The Sixth Circuit has explained that “the purpose of a TRO under Rule 65 is to preserve the status quo so that a reasoned resolution of a dispute may be had.” *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir. 1996)). Plaintiff bears the heavy burden of demonstrating its entitlement to a TRO. An “injunction is



an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it.” *Overstreet v. Lexington–Fayette Urban County Gov’t*, 305 F.3d 566, 573 (6th Cir. 2002). In determining whether to grant injunctive relief, this Court must weigh four factors: (1) the plaintiff’s likelihood of success on the merits; (2) the likelihood that the plaintiff will suffer irreparable harm without the preliminary injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the injunction serves the public interest. *See Bailey v. Callaghan*, 715 F.3d 956, 958 (6th Cir. 2013). “Although no one factor is controlling, a finding that there is simply no likelihood of success on the merits is usually fatal.” *Gonzales v. Nat’l Bd. of Med. Exam’rs*, 225 F.3d 620, 625 (6th Cir. 2000).

Here, Plaintiff fails to show either a likelihood of success on the merits or irreparable injury. Hence, the practical effect of granting Plaintiff’s motion would be limited to the costly obstruction of NLRB proceedings that flies in face of the public interest. Accordingly, preservation of the *status quo* and prevention of harm to the public may be achieved only by *denying* Plaintiff’s motion.

**A. Plaintiff's Claims Have No Likelihood of Success On the Merits.**

1. District Courts Lack Subject Matter Jurisdiction to Enjoin Unfair Labor Practice Proceedings.

Plaintiff is unlikely to succeed on the merits. Over 70 years ago, in *Myers v. Bethlehem Shipbuilding Co.*, 303 U.S. 41 (1938), the Supreme Court held that United States district courts lack subject-matter jurisdiction to review or enjoin the processing of an unfair labor practice case by the National Labor Relations Board. Nor can Plaintiff meet the “exceedingly high” standard to establish subject matter jurisdiction under *Leedom v. Kyne*, 358 U.S. 184 (1958).

By way of background, Board orders are not self-enforcing. Section 10(e) of the NLRA, 29 U.S.C. § 160(e), provides that the Board must seek enforcement of its orders from an appropriate Court of Appeals for such orders to become enforceable as judicial injunctions. Conversely, any “aggrieved person” may seek to set aside a final Board order in a Court of Appeals under Section 10(f) of the NLRA, 29 U.S.C. § 160(f).

Reviewing the NLRA’s broad provision of judicial review, the *Myers* Court determined that it provides “an adequate opportunity to secure judicial protection against possible illegal action on the part of

the Board.” *Myers*, 303 U.S. at 48. Indeed, the *Myers* Court emphasized the comprehensive nature of appellate court review available at the conclusion of Agency unfair labor practice cases: “[A]ll questions of the jurisdiction of the Board and the regularity of its proceedings and all questions of constitutional right or statutory authority are open to examination by the court.” *Id.* at 49 (emphasis added) (quoting *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 47 (1937)). Such review affords current and future parties “an adequate opportunity” to secure judicial protection from the Board’s proceeding because “until the Board’s order has been affirmed by the appropriate . . . Court of Appeals, no penalty accrues for disobeying it.” *Id.* at 48.

Thus, because “the procedure before the Board is appropriate and the judicial review so provided is adequate, Congress had power to vest *exclusive jurisdiction* in the Board and the Circuit Court of Appeals.” *Id.* at 50 (emphasis added). For these reasons, district court jurisdiction over matters arising in unfair labor practice cases was found to be incompatible with Congress’s statutory design. *Id.*; see also *Detroit Newspaper Agency v. NLRB*, 286 F.3d 391, 400 (6th Cir. 2002). Accord:

*Zipp v. Geske & Sons, Inc.*, 103 F.3d 1379, 1382-83 (7th Cir. 1997);  
*Bokat v. Tidewater Equipment Co.*, 363 F.2d 667, 671 (5th Cir. 1966).

Section 10(f) of the Act furthermore permits “any person” – not just “any party” – “aggrieved” by the Board’s final order to seek judicial review in an appropriate circuit court. 29 U.S.C. § 160(f). To be “aggrieved” within the meaning of Section 10(f), a litigant must demonstrate that the Board’s order has an “adverse effect in fact.” *Oil, Chem. & Atomic Workers v. NLRB*, 694 F.2d 1289, 1294 (D.C. Cir. 1982) (quoting *Retail Clerks Union 1059 v. NLRB*, 348 F.2d 369, 370 (D.C. Cir. 1965)); see, e.g., *Brentwood at Hobart v. NLRB*, 675 F.3d 999, 1005 (6th Cir. 2012) (parent company established that Sixth Circuit was appropriate venue for petition for review of Board order, where parent company was directly involved in operations of respondent nursing home, and was thus “aggrieved”). Accordingly, if Plaintiff is aggrieved by a final order of the Board in the unfair labor practice case, it will have an adequate alternative path to the statutorily-provided Section 10(f) judicial review regardless of its current party status.

2. Plaintiff Cannot Demonstrate That the Court Has Subject-Matter Jurisdiction Under *Leedom v. Kyne*

In *Leedom v. Kyne*, 358 U.S. 184, 187 (1958), the Supreme Court carved out a narrow exception to the general rule established in *Myers*. That case held that district courts may exercise jurisdiction under 28 U.S.C. § 1337 “to strike down an order of the Board made in excess of its delegated powers and contrary to a specific prohibition in the Act,” 358 U.S. at 188, but only “[i]f the absence of jurisdiction of the federal courts [would] mean[] a sacrifice or obliteration of a right which Congress has created,” *id.* at 190 (quoting *Switchmen’s Union v. Nat’l Mediation Bd.*, 320 U.S. 297, 300 (1943)). “Thus, in order to justify the exercise of [*Kyne*] jurisdiction, a plaintiff must show, first, that the agency has acted ‘in excess of its delegated powers and contrary to a specific prohibition’ which ‘is clear and mandatory,’ and, second, that barring review by the district court ‘would wholly deprive [the party] of a meaningful and adequate means of vindicating its statutory rights.’” *Nat’l Air Traffic Controllers Ass’n v. Fed. Serv. Impasses Panel*, 437 F.3d 1256, 1263 (D.C. Cir. 2006) (second alteration in original) (citation omitted). Subsequent caselaw has also suggested that *Kyne* jurisdiction extends to “substantial showing[s]” of violations of constitutional rights.

*Am. Gen. Ins. Co. v. Fed. Trade Comm'n*, 496 F.2d 197, 200 (5th Cir. 1974).

“The federal courts have consistently recognized the limits imposed by the *Kyne* decision.” *Physicians Nat’l House Staff Ass’n v. Fanning*, 642 F.2d 492, 496 (D.C. Cir. 1980) (en banc); *see also id.* at 503 (dissenting opinion) (“This circuit, like the other lower courts, has been frugal in recognizing the *Kyne* exception.”). Similarly, the D.C. Circuit, where many cases invoking *Kyne* are filed, has repeatedly emphasized how difficult it is for plaintiffs to establish jurisdiction under its auspices. Indeed, “[t]he limits of *Kyne* jurisdiction have been described as ‘nearly insurmountable’ by the District of Columbia Circuit.” *Int’l Union of Operating Eng’rs, Local 70 v. NLRB*, 940 F. Supp. 1439, 1442 n.3 (D. Minn. 1996) (quoting *U.S. Dep’t of Justice v. FLRA*, 981 F.2d 1339, 1343 (D.C. Cir 1993)). “In *Physicians*, [the Court of Appeals] made it unmistakably clear that the *Kyne* exception is extraordinarily narrow.” *Hartz Mountain Corp. v. Dotson*, 727 F.2d 1308, 1312 (D.C. Cir. 1984). In *Detroit Newspaper*, the Sixth Circuit fully explained the policy reasons supporting only the extraordinary application of *Leedom* jurisdiction:

the doctrine of exhaustion in the administrative context serves interests of accuracy, efficiency, agency autonomy and judicial economy, inasmuch as the doctrine promotes a sensible division of tasks between the agency and the courts: parties are discouraged from weakening the position of the agency by flouting its processes and the courts' resources are reserved for review and resolution of those matters where a dispositive solution is unavailable in the administration process.

286 F.3d at 397 (quotations omitted).

Plaintiff cannot demonstrate that the agency has acted in excess of its delegated powers or in violation of the Constitution. As an initial matter, Plaintiff does not seriously dispute that the Board has statutory authority to impose liability against QHC and QHCCS, as successors to CHSI.

Plaintiff's contention (Pl. Mot. at 7-8) that *Chamber of Commerce v. NLRB*, 721 F.3d 152 (4<sup>th</sup> Cir. 2014), somehow prohibits the Board from holding additional parties derivatively liable is at odds with settled case law. As recognized by federal courts, the Board is well within its rights to impose "derivative liability on new parties in a supplemental proceeding without commencing a new unfair labor practice proceeding against those parties." *Associated General Contractors v. NLRB*, 929 F.2d 910, 913 (2d Cir. 1991), citing *NLRB v.*

*C.C.C. Associates, Inc.*, 306 F.2d 534 (2d Cir. 1962); *see also NLRB v. O'Neill*, 965 F.2d 1522, 1529 (9<sup>th</sup> Cir. 1992).<sup>7</sup>

In order to extend to Plaintiff, it would have to be explicitly “pled into” the case—either through issuance of an administrative “compliance specification” against it, 29 C.F.R. 102.54, or through the filing of a motion to a circuit court naming it as an additional respondent in contempt. *U.S. v. Hochschild*, 977 F.2d 208 (6<sup>th</sup> Cir. 1992); *NLRB v. Deena Artware Inc.*, 310 F.2d 470, 474 (6<sup>th</sup> Cir. 1962).

Following this notice, Plaintiff will be accorded an opportunity to be heard before liability may be imposed against them. And precisely for these reasons, Plaintiff has no claim under the Due Process Clause of the Constitution. U.S. Const., Am. V.<sup>8</sup>

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<sup>7</sup> *Chamber of Commerce v. NLRB*, moreover, concerned the Board’s rulemaking authority under Section 6 of the Act, as opposed to its ability to seek derivative liability against related business entities under Section 10. Nor does *Chamber of Commerce* stand for the proposition that the Board cannot enter a corporate-wide or nationwide order against a named respondent.

<sup>8</sup> “For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.” *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (internal quotations and citations omitted). Thus, a case heavily relied upon by Plaintiff (Pl. Mot. at 8), *Northern Montana Health Care Center*



There is an additional reason that Plaintiff is off the hook here. Its stated concern is that as a subsidiary or affiliate of QHC and QHCCS, it could at some point in the future be found to be a single employer with the latter two and thereby subject to any remedial order QHC and QHCCS would be liable for here. But, that presupposes three things: first, that QHC or QHCCS would fail to remediate the unfair labor practices of its predecessor CHSI; second, that Plaintiff is indeed a single employer with QHC or QHCCS; and third, that as a single employer with QHC or QHCCS, Plaintiff could be held accountable for latter's failure to remediate *these* unfair labor practices. Each of these three do not follow automatically from a successorship finding against QHC or QHCCS. To the extent that Plaintiff would be held liable it

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*v. NLRB*, 178 F.3d 1089, 1093, 1098 (9<sup>th</sup> Cir. 1999), not only exemplifies a circuit court carefully examining claims of due process violations by the Board, it in fact demonstrates exactly why Plaintiff's purported need for extraordinary injunctive relief must fail. In *Northern Montana*, the Ninth Circuit provided this meaningful judicial review of the hospital's due process claims *after* the Board issued its final order, pursuant to the ordinary Section 10(f) review process. 29 U.S.C. Section 160(f). Thus, Plaintiff has not shown and can not show why it should not be required to seek review through that self-same statutory process.

could only come *after* an administrative or other hearing in which evidence is produced and findings are made as to each.<sup>9</sup>

This procedure satisfies the constitutional requirement of notice and an opportunity to be heard before Plaintiff's property may be taken.. In *NLRB v. International Measurement and Control Co., Inc.*, 978 F.2d 334, 337 (7<sup>th</sup> Cir. 1992), the court recognized that pursuant to a Board finding of single employer status, “[i]f, as the Board found, the two partnerships, three corporations, and four Dybels are but a single employer, then notice to one was notice to all.” The Board has similarly held that

permitting the General Counsel to litigate issues of derivative liability in a compliance proceeding, even when those issues could have been pleaded and litigated in the original unfair labor practice proceeding, will better insure effectuation of the remedial purposes and policies of the Act without denying procedural fairness to any party alleged to be derivatively liable. In the present case, for instance, Diversified has been found liable only after it received fair notice and full opportunity to litigate at the

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<sup>9</sup> To the extent that Plaintiff is concerned that it may be held liable in contempt for future violations by QHC or QHCCS, Plaintiff's essential premise is wide of the mark. Even if found to be successors, neither QHC nor QHCCS will be subject to the so called “cease and desist” provisions of a Court-enforced Board order here. They are only accountable for remedying the unfair labor practices found against CHSI here – in short, the backpay, notice posting and other similar provisions. That is how *Golden State* successorship operates. 414 U.S. at 176.

compliance hearing the question of its status as Expandvelope's *alter ego*. Once found to be Expandvelope's *alter ego*, Diversified cannot complain that it should have had notice and an opportunity to defend itself against the underlying unfair labor practice charges. Since the interests of *alter egos* are by definition identical, the *alter ego* finding in the compliance proceeding conclusively established that Diversified did receive adequate notice, was present at the hearing, and did defend itself through the representation of Expandvelope in the earlier unfair labor practice proceeding.

*Southeastern Envelope Co.*, 246 NLRB 423, 424 (1979). These cases stand for the common-sense proposition that where two “parties” are not, in fact, legally distinct parties at all, but are merely different names for or branches of the same underlying entity, due process does not require the Board to abide by the fiction that those “parties” are separate entities.

For these reasons, Plaintiff is unlikely to prevail upon the merits of its claims. District Courts have an exceedingly narrow role to play in reviewing Board unfair labor practice proceedings, and Plaintiff cannot show that the extraordinarily narrow *Kyne* exception applies to this situation.

#### **B. Plaintiff Has Not Shown Irreparable Injury.**

To demonstrate irreparable harm, “the plaintiffs must show that unless [the requested relief is granted] immediately, they will suffer

actual and imminent harm rather than harm that is speculative or unsubstantiated. *Abney v. Amgen, Inc.*, 443 F.3d 540, 552 (6<sup>th</sup> Cir. 2006) (quotations omitted); *Winter v. NRDC*, 555 U.S. 7, 22 (2008) (“Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”). Moreover, the alleged harm cannot be considered irreparable if it considered fully compensable by monetary damages. *Overstreet v. Lexington-Fayette Urban County Gov’t*, 305 F.3d 566, 578 (6<sup>th</sup> Cir. 2002).

As shown above, Plaintiff’s purported “irreparable injury” is neither “actual and imminent” nor even “speculative.” Ample judicial review is available to this Plaintiff *even if* the NLRB eventually does seek to hold it liable in a contempt or compliance proceeding.<sup>10</sup> Thus, there is no “actual and imminent” harm to this Plaintiff as required to justify preliminary relief. *See Abney v. Amgen, Inc.*, 443 F.3d at 552.

### **C. The Equities, Balance of Harms, And Public Interest Weigh Strongly Against Enjoining The Board’s Proceeding.**

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<sup>10</sup> In addition, as noted above, if “aggrieved” the Plaintiff may seek judicial review even of the instant unfair labor practice proceeding.

Given the absence of injury on the part of Plaintiff, the only factor relevant to the balance-of-harms analysis is the harm to the NLRB and public interest if the NLRB hearings commencing on Monday, March 27, are enjoined. In *Nken v. Holder*, 556 U.S. 418, 435-36 (2009), the Supreme Court explained that when the government is the party opposing preliminary relief, the remaining factors of assessing harm to other parties interested in the proceeding and weighing the public interest, merge. Moreover, the Supreme Court has stressed that “courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24 (quotation omitted).

Here, “the balance of equities and consideration of the overall public interest in this case tip strongly in favor of” the Board. *See id.* at 26. Thus, it is a maxim that “he who seeks equity must do equity.” Joseph Story, *Equity Jurisprudence* § 59 (1st ed. 1836). Plaintiff’s behavior in this case, however, falls far short of this principle. As shown below, principles of laches should bar the courthouse door to any extraordinary relief on their behalf.

“A party asserting **laches** must show: (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting it.” *Natron Corp. v. STMicroelectronics, Inc.*, 305 F.3d 397, 408 (6<sup>th</sup> Cir. 2002). Plaintiff’s corporate parent, QHC, has been aware of the pendency of the unfair labor practice proceedings in CHS I seeking corporate-wide relief **since January 2016**. Moreover, they have been aware since before September 2016 that the NLRB was seeking to hold QHC and QHCCS liable as successor entities to CHSI and CHSPSC in CHS II. Finally, QHC and QHCCS has been aware since December 2016 that the hearing would commence on March 27, 2017.

Despite the fact that the arguments it proffers are pure questions of law which could have been raised in an immediate action to enjoin the NLRB complaint, Plaintiff chose to wait for almost three months from the time that their corporate parent received notice of hearing, and a mere two working days prior to commencing the ALJ proceeding, before choosing to institute this district court action. This motion appears to be strategically timed to provide the NLRB with hardly any time to draft a fully developed response.

Moreover, as explained in the attached affidavit of Regional Director Allen Binstock, (Ex. 1), given the timing of this motion, a temporary restraining order would throw a costly wrench into the ongoing NLRB proceedings. As the administrative hearings are set to commence on Monday, NLRB personnel have already traveled from the other regions to Beaver, West Virginia to prepare for the hearing, many out-of-town counsel for respondents are also preparing for the West Virginia hearing to begin, and many crucial aspects of the hearing have been coordinated pursuant to the ALJ's case management orders in this case. At this point, any delay would impose substantial financial burdens upon a federal agency subject to considerable budget restraints.

Even setting aside Plaintiff's questionable litigation tactics and the considerable monetary costs to the Agency and other parties that Plaintiff seeks to impose, the public interest strongly favors permitting the unfair labor practice case to move ahead. Delay of this case may irreparably prejudice the rights of employees that the Board protects. To halt the Board's process would effectively deny charging parties and the public at large of rights and protections under the NLRA, which

Congress did not lightly bestow. The NLRB is an agency charged with protecting the public interest in the exercise of the rights guaranteed by the National Labor Relations Act. *See Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 192-95 (1941). Compared to the minimal and wholly speculative harm to Plaintiff from permitting the Board case to proceed, the harm to the public interest is substantial.

Thus, the purported urgent need for relief here is a self-inflicted wound caused by Plaintiff's delay, and should not require this Court to issue a Temporary Restraining Order or Preliminary Injunction, particularly when, as shown above, this Court lacks subject-matter jurisdiction to enjoin the Board's unfair labor practice proceeding.

### III. CONCLUSION

Based on the foregoing, Defendants respectfully request that Plaintiff's motion

be denied.

Respectfully submitted,

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March 24, 2017  
Washington, DC

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION  
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7:17-cv-00056-KKC

**DECLARATION OF REGIONAL DIRECTOR ALLEN BINSTOCK**

1. I am currently employed by the National Labor Relations Board (“the Board”), as the Regional Director of the Board’s Cleveland Regional Office (Region 8) and have served in that capacity since March, 2014. As the Regional Director, my duties include investigating charges, determining whether to issue complaints based on those charges, and litigating cases in administrative hearings before the Board’s Administrative Law Judges (ALJs).

2. On November 27, 2013, March 13, 2014, June 13, 2014, June 30, 2014, May 20, 2015, June 8, 2015, January 9, 2016, charges were filed in Case Nos. 08-CA-117890, 08-CA-124398, 08-CA-130717, 08-CA-131772, 08-CA-144212, 08-CA-153759, and 08-CA-166039 respectively, with my office, alleging, generally, that Affinity Medical Center (“Affinity”), at its Massillon, Ohio facility, had committed unfair labor practices under the National Labor Relations Act (“the Act”). Some of these charges named Community Health Systems, Inc. (“CHSI”) and Community Health Systems Professional Services Corporation (“CHSPSC”) as additional respondents with Affinity. The other charges were later amended to include CHSI and CHSPSC as respondents.

3. I oversaw Region 8’s investigation into the above named charges, and determined that there was sufficient merit in each to issue a complaint.

4. Twenty-three (23) additional charges were filed with other Board regional offices, also naming CHSI and CHSPSC as respondents, and single/joint employers with the various named hospitals: Affinity Medical Center (“Affinity”), Bluefield Regional Medical Center (“Bluefield”) Greenbrier Valley Medical Center (“Greenbrier”), Barstow Community Hospital (“Barstow”), and Watsonville Community Hospital (“Watsonville”). In coordination with the Regional Directors who received the additional charges and with the Board’s General Counsel in the agency’s headquarters, I consolidated Region 8’s seven cases with the twenty-three cases from other regions.

5. About August 3, 2015, Respondent CHSI announced that it was creating a publicly traded hospital company, Quorum Health Corporation (“QHC”) by spinning off to its shareholders 38 hospitals and other assets.

6. By letter dated October 13, 2015, Quorum Health Corporation was put on notice for its potential liability in NLRB Cases 08-CA-117890, et al. On October 19, 2015, I issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing against various named hospitals, including Affinity, Bluefield, Greenbrier, Barstow, Watsonville, CHSPSC and CHSI in those same cases. A copy of the Consolidated Complaint was served on Quorum Health Corporation. On December 15, 2015, a charge was filed in Case 08-CA-166039 against respondents Affinity, CHSI, CHSPSC, Watsonville, and Quorum Health Corporation. On February 5, 2016, I issued an Order Further Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing (“Amended Consolidated Complaint”) in 08-CA-117890, et al., involving the above-named hospitals, and CHSI and CHSPSC, adding new case numbers and allegations. A copy of the Amended Consolidated Complaint in 08-CA-117890, et al. was served on Quorum Health Corporation and an entity named QHCCS, LLC. I will refer herein to that litigation as the Consolidated Action in 08-CA-117890, et al or as CHS I. A trial in the latter cases began before an Administrative Law Judge of the NLRB on February 29, 2016, and is still underway.

7. Beginning on January 11, 2016, additional unfair labor practice charges were filed in the Cleveland Regional Office and other Regional Offices of the

Board against the same Respondents and after merit was found to many of the allegations, a Third Consolidated Complaint (“Third Consolidated Complaint”) issued in Cases 08-CA-167313, et al. That Complaint names Quorum Health Corporation and QHCCS, LLC as successor employers. These cases are referred to as CHS II.

8. General Counsel for the Board moved to consolidate these charges in CHS II with the Consolidated Action in 08-CA-117890, et al. (CHS I). Respondents opposed the motion and on May 2, 2016, Administrative Law Judge Eleanor Laws, noting that the initial series of cases had grown large and unwieldy, denied the motion.

9. By various letters thereafter sent by the General Counsel of the Board, Respondent Quorum Health Corporation and QHCCS, LLC were put on notice of their potential liability in the cases in CHS II. Respondent Quorum Health Corporation was put on notice of its potential liability in Cases 08-CA-167313 and 31-CA-167522 by letter dated January 20, 2016, sent by regular and certified mail from the Board’s General Counsel to Thomas Miller, Chief Executive Officer of Respondent Quorum Health Corporation. Respondent QHCCS was put on notice of its potential liability in Cases 08-CA-167313 and 31-CA-167522 by letter dated January 20, 2016, sent by regular and certified mail from the General Counsel to the Agent of Service of Respondent QHCCS c/o Corporation Service Company for Respondent QHCCS. Respondent Quorum Health Corporation was put on notice of its potential liability in Case 31-CA-174673 by letter dated May 4,

2016, sent by regular and certified mail to Thomas Miller, Chief Executive Officer of Respondent Quorum Health Corporation. Respondent QHCCS was put on notice of its potential liability in Case 31-CA-174673 by letter dated May 4, 2016, sent by regular and certified mail to the Agent of Service of Respondent QHCCS c/o Corporation Service Company for Respondent QHCCS.

10. On or about April 29, 2016, Respondent Quorum Health Corporation acquired 38 hospitals from Respondent CHSI, including Respondents Affinity, Barstow and Watsonville. QHCCS, LLC is a limited liability corporation which has been a wholly owned subsidiary of QHC.

11. On August 19, 2016, I issued a Second Order Further Consolidating Cases, Second Amended Consolidated Complaint and Notice of Hearing in the Consolidated Action in CHS I. A copy of this Second Amended Consolidated Complaint was served on Quorum Health Corporation and QHCCS, LLC.

12. On September 26, 2016, I issued an Order Further Consolidating Cases, Third Consolidated Complaint (“Third Consolidated Complaint”) in CHS II. The Third Consolidated Complaint alleged that CHSI and CHSPSC were single/joint employers with Affinity, Barstow, Bluefield, Greenbrier and Watsonville. As discussed above, the Third Consolidated Complaint named QHC and QHCCS, LLC as successors and copies were served on those parties.

13. On December 6, 2016, I issued an Order Scheduling the Hearing in CHS II on March 27, 2017, at a location to be designated later in Princeton, West Virginia.

14. On January 30, 2017, I issued an Order Scheduling Situs of Hearing in CHS II on March 27, 2017 in Nashville, Tennessee.

15. On February 22, 2017, subpoenas were issued to the Respondents in CHS II advising them that the hearing on March 27, 2017 would be held in Beaver, West Virginia.

16. On March 22, 2017, the parties in CHS II were again informed, during a conference call with Administrative Law Judge Geoffrey Carter, that the location of the hearing on March 27 would be Beaver, West Virginia.

17. On March 23, 2017, I issued an Order Changing Situs of Hearing in CHS II to Beaver, West Virginia, but still maintaining the date of March 27, 2017 to commence the hearing.

18. The parties have also been working to schedule subsequent hearing dates at different locations concerning the various charges in the Third Consolidated Complaint in CHS II and have tentatively scheduled various dates.

19. For the past several months, General Counsel's staff in my Region and other Regions have expended significant resources to prepare for the lengthy hearing in the 11 cases in CHS II. Preparing witnesses and coordinating appropriate sequencing of testimony has consumed a great deal of time and



resources. Rescheduling the hearing date at this point will be extremely disruptive to having witnesses available when we need them.

20. The General Counsel's attorneys from SubRegion 11, stationed in Winston-Salem, North Carolina have scheduled approximately twelve (12) witnesses to appear and give testimony before the Administrative Law Judge in Beaver, West Virginia during the week of March 27, 2017, to adduce testimony related to allegations involving Bluefield. The General Counsel has also subpoenaed various representatives of Bluefield, and a third party entity, to testify during that week pursuant to FRE 611(c).

21. Two of the General Counsel's witnesses will be flying from Maine and Ohio, respectively, to Beaver, West Virginia. One witness may be potentially flying from California. There are also various employee witnesses travelling at great distance and expense to the hearing from across the State of West Virginia and from other States.

22. Because of the number of entities involved, there are approximately seven out of town counsel coming to the hearing to represent various respondents. Additionally, the Board has incurred the expense of assigning an attorney from my Region in Cleveland, Ohio to assist at the hearing in Beaver, West Virginia.

23. The coordination of witnesses and attorneys necessary to try the case before the Administrative Law Judge demands significant resources from this Agency. Requiring the Agency to reschedule the hearing would, I believe, waste

public resources, harm the Agency's statutory mission, and be contrary to the public interest.

I declare under penalty of perjury that I have read the foregoing Declaration and to the best of my knowledge and belief, it is true and correct.

/s/ Allen Binstock

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ALLEN BINSTOCK  
Regional Director  
National Labor Relations Board  
Cleveland Regional Office (Region 8)  
1240 East 9th Street  
Room 1695  
Cleveland, OH 44199-2086  
Phone: (216) 522-3715  
Fax: (216) 522-2418  
[abinstock@nrlrb.gov](mailto:abinstock@nrlrb.gov)

Dated: Cleveland, Ohio  
March 23, 2017

# Exhibit 2

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**DHSC, LLC, d/b/a AFFINITY MEDICAL CENTER,  
COMMUNITY HEALTH SYSTEMS, INC., and/or  
COMMUNITY HEALTH SYSTEMS PROFESSIONAL  
SERVICES CORPORATION, LLC,  
a single employer and/or joint employers**

**and**

**CASES**

**08-CA-117890  
08-CA-124398  
08-CA-131772  
08-CA-144212  
08-CA-153759**

**NATIONAL NURSES ORGANIZING COMMITTEE  
(NNOC)**

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**DHSC, LLC, d/b/a AFFINITY MEDICAL CENTER,  
COMMUNITY HEALTH SYSTEMS, INC., and/or  
COMMUNITY HEALTH SYSTEMS PROFESSIONAL  
SERVICES CORPORATION, LLC, et al.  
a single and/or joint employers**

**and**

**CASE**

**08-CA-130717**

**CALIFORNIA NURSES ASSOCIATION/NATIONAL  
NURSES ORGANIZING COMMITTEE (CNA/NNOC)**

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**HOSPITAL OF BARSTOW INC., d/b/a BARSTOW  
COMMUNITY HOSPITAL, COMMUNITY HEALTH SYSTEMS, INC.,  
and/or COMMUNITY HEALTH SYSTEMS PROFESSIONAL  
SERVICES CORPORATION, LLC,  
a single employer and/or joint employers**

**and**

**CASES**

**08-CA-130717  
31-CA-116300  
31-CA-119831  
31-CA-124540  
31-CA-133880  
31-CA-153504**

**CALIFORNIA NURSES ASSOCIATION/NATIONAL  
NURSES ORGANIZING COMMITTEE (CNA/NNOC)**

**Exhibit 2**

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**BLUEFIELD HOSPITAL COMPANY, LLC d/b/a  
BLUEFIELD REGIONAL MEDICAL CENTER,  
COMMUNITY HEALTH SYSTEMS, INC., and/or  
COMMUNITY HEALTH SYSTEMS PROFESSIONAL  
SERVICES CORPORATION, LLC,  
a single employer and/or joint employers**

**and**

**CASES**

**08-CA-130717**

**10-CA-094403**

**10-CA-110743**

**NATIONAL NURSES ORGANIZING COMMITTEE  
(NNOC), AFL-CIO**

**10-CA-112255**

**10-CA-116246**

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**FALLBROOK HOSPITAL CORPORATION, d/b/a  
FALLBROOK HOSPITAL, COMMUNITY HEALTH SYSTEMS, INC.,  
and/or COMMUNITY HEALTH SYSTEMS PROFESSIONAL  
SERVICES CORPORATION, LLC,  
a single employer and/or joint employers**

**and**

**CASES**

**08-CA-130717**

**21-CA-121480**

**21-CA-124295**

**21-CA-134774**

**CALIFORNIA NURSES ASSOCIATION/NATIONAL  
NURSES ORGANIZING COMMITTEE (CNA/NNOC), AFL-CIO**

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**GREENBRIER, VMC, LLC d/b/a GREENBRIER  
VALLEY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC.,  
and/or COMMUNITY HEALTH SYSTEMS PROFESSIONAL  
SERVICES CORPORATION, LLC,  
a single employer and/or joint employers**

**and**

**CASES**

**08-CA-130717**

**10-CA-117698**

**10-CA-121156**

**NATIONAL NURSES ORGANIZING COMMITTEE  
(NNOC), AFL-CIO**

**10-CA-116416**

**10-CA-124354**

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## Exhibit 2

**JACKSON HOSPITAL CORPORATION d/b/a KENTUCKY  
RIVER MEDICAL CENTER,  
COMMUNITY HEALTH SYSTEMS, INC., and/or  
COMMUNITY HEALTH SYSTEMS PROFESSIONAL  
SERVICES CORPORATION, LLC, a single employer  
and/or joint employers**

**and**

**CASES**

**09-CA-102403**

**09-CA-105751**

**UNITED STEEL, PAPER AND FORESTRY**

**09-CA-129151**

**RUBBER, MANUFACTURING, ENERGY**

**09-CA-131638**

**ALLIED INDUSTRIAL AND SERVICE**

**09-CA-133951**

**WORKERS INTERNATIONAL UNION, AFL-CIO-CLC**

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**WATSONVILLE HOSPITAL CORPORATION d/b/a  
WATSONVILLE COMMUNITY HOSPITAL,  
COMMUNITY HEALTH SYSTEMS, INC., and/or  
COMMUNITY HEALTH SYSTEMS PROFESSIONAL  
SERVICES CORPORATION, LLC, a single employer  
and/or joint employers**

**and**

**CASES**

**08-CA-130717**

**32-CA-120642**

**32-CA-124332**

**CALIFORNIA NURSES ASSOCIATION (CNA),  
NATIONAL NURSES UNITED**

### **ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 08-CA-117890, 08-CA-124398, 08-CA-131772, 08-CA-144212 and 08-CA-153759 which are based on charges filed by the National Nurses Organizing Committee, AFL-CIO (NNOC) and

Case 08-CA-130717 based on a charge filed by California Nurses Association/National Nurses Organizing Committee, AFL-CIO (CNA/NNOC) against DHSC, LLC, d/b/a Affinity Medical Center (Respondent Affinity) and its single and/or joint employer Community Health Systems, Inc., (Respondent CHSI) and/or its single and/or joint employer Community Health Systems Professional Services Corp., LLC, also known as Community Health Systems Professional Services Corporation prior to January 1, 2015 (Respondent CHSPSC), and Cases 31-CA-116300, 31-CA-119831, 31-CA-124540, 31-CA-133880 and 31-CA-153504, which are based on charges filed by CNA/NNOC against Hospital of Barstow Inc., d/b/a Barstow Community Hospital (Respondent Barstow) and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC, and Cases 10-CA-094403, 10-CA-110743, 10-CA-112255, and 10-CA-116246 filed by NNOC against Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center (Respondent Bluefield) and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC, in which an Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing issued against Respondent Bluefield on December 31, 2013, and an Amendment to Second Consolidated Complaint issued against Respondent Bluefield on March 6, 2014 in Cases 10-CA-110743, 10-CA-112255 and 10-CA-094403, and in Cases 10-CA-117698, 10-CA-121156, 10-CA-126416, and 10-CA-124354 filed by NNOC against Greenbrier, VMC, LLC d/b/a Greenbrier Valley Medical Center (Respondent Greenbrier) and its single and/or joint employer Respondent CHSI and its single and/or joint employer Respondent CHSPSC, in which an Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing issued on June 16, 2014 against Respondent Greenbrier in Cases 10-CA-117698 and 10-CA-121156, and Cases 21-CA-121480, 21-CA-124295, and 21-CA-134774 filed by CNA/NNOC against Fallbrook

Hospital Corporation d/b/a Fallbrook Hospital and its single and/or joint employer Respondent CHSI and its single and/or joint employer Respondent CHSPSC, and Cases 09-CA-102403, 09-CA-105751, 09-CA-129151, 09-CA-131638 and 09-CA-133951 filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, (United Steelworkers) against Jackson Hospital Corp., also known as Jackson Hospital Corporation d/b/a Kentucky River Medical Center (Respondent Kentucky River) and its single and/or joint employer Respondent CHSI and its single and/or joint employer, Respondent CHSPSC, and Cases 32-CA-120642, 32-CA-124332 filed by the California Nurses Association, National Nurses United (CNA) against Watsonville Community Hospital (Respondent Watsonville) and its single and/or joint employer Respondent CHSI and its single and/or joint employer Respondent CHSPSC, are consolidated. This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges that the respective Respondents have violated the Act as described below:

1. (A) The original charge in Case 08-CA-117890 was filed by the NNOC against Respondent Affinity on November 27, 2013, and a copy was served on Respondent Affinity by U.S. mail on November 27, 2013.

(B) The amended charge in Case 08-CA-117890 was filed by the NNOC against Respondent Affinity on December 17, 2014, and a copy was served on Respondent Affinity by U.S. mail on December 17, 2014.

(C) The second amended charge in Case 08-CA-117890 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on May 21,

## Exhibit 2

2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 21, 2015.

(D) The third amended charge in Case 08-CA-117890 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on September 18, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on September 22, 2015.

(E) The original charge in Case 08-CA-124398 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on March 13, 2014, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on March 14, 2014.

(F) The first amended charge in Case 08-CA-124398 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on May 20, 2014, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 20, 2014.

(G) The second amended charge in Case 08-CA-124398 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 21, 2015.

(H) The original charge in Case 08-CA-130717 was filed by the CNA/NNOC against Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on June 13, 2014, and a copy was served on Respondent Affinity, Respondent Barstow,



Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 13, 2014.

(I) The first amended charge in Case 08-CA-130717 was filed by the NNOC against Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on May 20, 2015, and a copy was served on Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 21, 2015.

(J) The second amended charge in Case 08-CA-130717 was filed by the CNA/NNOC against Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 26, 2015.

(K) The original charge in Case 08-CA-131772 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on June 30, 2014, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 30, 2014.

(L) The first amended charge in Case 08-CA-130717 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on May 26, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 26, 2015.

(M) The original charge in Case 08-CA-144212 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on January 9, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on January 12, 2015.

(N) The first amended charge in Case 08-CA-144212 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on May 26, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 26, 2015.

(O) The second amended charge in Case 08-CA-144212 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on July 21, 2015, and a copy was served by U.S. mail on Respondent Affinity, Respondent CHSI and Respondent CHSPSC on July 22, 2015.

(P) The original charge in Case 08-CA-153759 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on June 8, 2015 and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 9, 2015.

(Q) The first amended charge in Case 08-CA-153759 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on July 2, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on July 2, 2015.

(R) The second amended charge in Case 08-CA-153759 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on September

## Exhibit 2

29, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on September 30, 2015.

(S) The third amended charge in Case 08-CA-153759 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on September 30, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on October 1, 2015.

2. (A) The original charge in Case 31-CA-116300 was filed by the CNA/NNOC against Respondent Barstow on October 31, 2013 and a copy was served on Respondent Barstow by U.S. mail on November 8, 2013 and November 26, 2013.

(B) The first amended charge in Case 31-CA-116300 was filed by the CNA/NNOC against Respondent Barstow on December 3, 2013, and a copy was served on Respondent Barstow by U.S. mail on December 9, 2013.

(C) The second amended charge in Case 31-CA-116300 was filed by the CNA/NNOC against Respondent Barstow on January 27, 2014 and a copy was served on Respondent Barstow by U.S. mail on February 3, 2014.

(D) The third amended charge in Case 31-CA-116300 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on May 26, 2015, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 22, 2015.

(E) The original charge in Case 31-CA-119831 was filed by the CNA/NNOC against Respondent Barstow on December 23, 2013 and a copy was served on Respondent Barstow by U.S. mail on January 6, 2014.

## Exhibit 2

(F) The first amended charge in Case 31-CA-119831 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on May 22, 2015 and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 29, 2015.

(G) The original charge in 31-CA-124540 was filed by the CNA/NNOC against Respondent Barstow and Respondent CHSI on March 12, 2014, and a copy was served on Respondent Barstow and Respondent CHSI by U.S. mail on March 18, 2014.

(H) The first amended charge in 31-CA-124540 was filed by the CNA/NNOC against Respondent Barstow and Respondent CHSI on May 14, 2014, and a copy was served on Respondent Barstow and Respondent CHSI by U.S. mail on May 15, 2014.

(I) The second amended charge in 31-CA-124540 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on May 22, 2015, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 4, 2015.

(J) The original charge in 31-CA-133880 was filed by the CNA/NNOC against Respondent Barstow and Respondent CHSI on July 31, 2014, and a copy was served on Respondent Barstow and Respondent CHSI by U.S. mail on August 1, 2014.

(K) The first amended charge in 31-CA-133880 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on May 20, 2015, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 2, 2015.

(L) The original charge in Case 31-CA-153504 was filed by the CNA/NNOC on June 1, 2015 against Respondent Barstow, Respondent CHSI and Respondent CHSPSC, and a

copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 4, 2015.

(M) The first amended charge in Case 31-CA-153504 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on July 16, 2015, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on July 17, 2015.

(N) The second amended charge in Case 31-CA-153504 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on August 25, 2015, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on August 26, 2015.

3. (A) The original charge in Case 10-CA-110743 was filed by the NNOC on August 7, 2013 against Respondent Bluefield, and a copy was served on Respondent Bluefield by U.S. mail on August 7, 2013.

(B) The first amended charge in Case 10-CA-110743 was filed by the NNOC against Respondent Bluefield on September 30, 2013, and a copy was served on Respondent Bluefield by U.S. mail on September 30, 2013.

(C) The second amended charge in Case 10-CA-110743 was filed by the NNOC against Respondent Bluefield and Respondent CHSI on March 19, 2014, and a copy was served on Respondent Bluefield and Respondent CHSI by U.S. mail on March 19, 2014.

(D) The third amended charge in Case 10-CA-110743 was filed by the NNOC against Respondent Bluefield and Respondent CHSI on May 21, 2015, and a copy was served on Respondent Bluefield and Respondent CHSI by U.S. mail on May 22, 2015.

## Exhibit 2

(E) The original charge in Case 10-CA-112255 was filed by the NNOC against Respondent Bluefield on August 28, 2013, and a copy was served on Respondent Bluefield by U.S. mail on August 29, 2013.

(F) The first amended charge in Case 10-CA-112255 was filed by the NNOC against Respondent Bluefield on November 20, 2013, and a copy was served on Respondent Bluefield by U.S. mail on November 20, 2013.

(G) The second amended charge in Case 10-CA-112255 was filed by the NNOC against Respondent Bluefield on November 25, 2013, and a copy was served on Respondent Bluefield by U.S. mail on November 26, 2013.

(H) The third amended charge in Case 10-CA-112255 was filed by the NNOC against Respondent Bluefield on March 19, 2014, and a copy was served on Respondent Bluefield by U.S. mail on March 19, 2014.

(I) The fourth amended charge in Case 10-CA-112255 was filed by the NNOC against Respondent Bluefield, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(J) The original charge in Case 10-CA-094403 was filed by the NNOC against Respondent Bluefield on December 6, 2012, and a copy was served on Respondent Bluefield by U.S. mail on December 7, 2012.

(K) The first amended charge in Case 10-CA-094403 was filed by the NNOC against Respondent Bluefield on January 31, 2013, and a copy was served on Respondent Bluefield by U.S. mail on January 31, 2013.

## Exhibit 2

(L) The second amended charge in Case 10-CA-094403 was filed by the NNOC against Respondent Bluefield, Respondent CHSI and its subsidiary Quorum Health Resources (Quorum Health Resources), Joint Employers, on September 10, 2013, and a copy was served on Respondent Bluefield, Respondent CHSI and Quorum Health Resources by U.S. mail on September 10, 2013.

(M) The third amended charge in Case 10-CA-094403 was filed by the NNOC on October 31, 2013 against Respondent Bluefield, Respondent CHSI and Respondent CHSPSC and a copy was served on Respondent Bluefield, Respondent CHSI, and Respondent CHSPSC by U.S. mail on October 31, 2013.

(N) The fourth amended charge in Case 10-CA-094403 was filed by the NNOC on March 13, 2014 against Respondent Bluefield and Respondent CHSI, and a copy was served on Respondent Bluefield and Respondent CHSI by U.S. mail on March 13, 2014.

(O) The fifth amended charge in Case 10-CA-094403 was filed by the NNOC on March 25, 2014 against Respondent Bluefield and Respondent CHSI, and a copy was served on Respondent Bluefield and Respondent CHSI on March 25, 2014.

(P) The sixth amended charge in Case 10-CA-094403 was filed by the NNOC on May 21, 2015 against Respondent Bluefield, Respondent CHSI and Respondent CHSPSC, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(Q) The original charge in Case 10-CA-116246 was filed by the NNOC against Respondent Bluefield on November 1, 2013, and a copy was served on Respondent Bluefield by U.S. mail on November 4, 2013.

## Exhibit 2

(R) The first amended charge in Case 10-CA-116246 was filed by the NNOC against Respondent Bluefield on December 18, 2013, and a copy was served on Respondent Bluefield by U.S. mail on December 18, 2013.

(S) The second amended charge in Case 10-CA-116246 was filed by the NNOC against Respondent Bluefield, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served by U.S. mail on Respondent Bluefield on May 22, 2015.

4. (A) The original charge in Case 21-CA-121480 was filed by the CNA/NNOC against Respondent Fallbrook on January 28, 2014, and a copy was served on Respondent Fallbrook by U.S. mail on January 29, 2014.

(B) The first amended charge in Case 21-CA-121480 was filed by the CNA/NNOC against Respondent Fallbrook on June 5, 2015, and a copy was served on Respondent Fallbrook by U.S. mail on June 9, 2015.

(C) The original charge in Case 21-CA-124295 was filed by the CNA/NNOC against Respondent Fallbrook on March 12, 2014, and a copy was served on Respondent Fallbrook by U.S. mail on March 12, 2014.

(D) The first amended charge in Case 21-CA-124295 was filed by the CNA/NNOC against Respondent Fallbrook on May 7, 2014, and a copy was served on Respondent Fallbrook by U.S. mail on May 8, 2014.

(E) The second amended charge in Case 21-CA-124295 was filed by the CNA/NNOC against Respondent Fallbrook on June 5, 2015, and a copy was served on Respondent Fallbrook by U.S. mail on June 9, 2015.



## Exhibit 2

(F) The original charge in Case 21-CA-134774 was filed by the CNA/NNOC against Respondent Fallbrook on August 14, 2014, and a copy was served on Respondent Fallbrook by U.S. mail on August 18, 2014.

(G) The first amended charge in Case 21-CA-134774 was filed by the CNA/NNOC against Respondent Fallbrook on June 5, 2015, and a copy was served on Respondent Fallbrook by U.S. mail on June 9, 2015.

5. (A) The original charge in Case 10-CA-117698 was filed by the NNOC against Respondent Greenbrier on November 22, 2013, and a copy was served on Respondent Greenbrier by U.S. mail on November 25, 2013.

(B) The first amended charge in Case 10-CA-117698 was filed by the NNOC against Respondent Greenbrier on January 17, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on January 17, 2014.

(C) The second amended charge in Case 10-CA-117698 was filed by the NNOC against Respondent Greenbrier on January 30, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on January 30, 2014.

(D) The third amended charge in Case 10-CA-117698 was filed by the NNOC against Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(E) The original charge in Case 10-CA-121156 was filed by the NNOC against Respondent Greenbrier on January 23, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on January 24, 2014.

## Exhibit 2

(F) The first amended charge in Case 10-CA-121156 was filed by the NNOC against Respondent Greenbrier on February 26, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on February 27, 2014.

(G) The second amended charge in Case 10-CA-121156 was filed by the NNOC against Respondent Greenbrier on June 13, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on June 16, 2014.

(H) The third amended charge in Case 10-CA-121156 was filed by the NNOC against Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(I) The charge in Case 10-CA-126416 was filed by the NNOC against Respondent Greenbrier and Respondent CHSI on April 11, 2014, and a copy was served on Respondent Greenbrier and Respondent CHSI by U.S. mail on April 11, 2014.

(J) The first amended charge in Case 10-CA-126416 was filed by the NNOC against Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by regular mail on May 21, 2015.

(K) The charge in Case 10-CA-124354 was filed by the NNOC against Respondent Greenbrier and Respondent CHSI on March 13, 2014, and a copy was served on Respondent Greenbrier and Respondent CHSI by U.S. mail on March 13, 2014.

(L) The first amended charge in Case 10-CA-124354 was filed by the NNOC against Respondent Greenbrier and Respondent CHSI on May 7, 2014, and a copy was served on Respondent Greenbrier and Respondent CHSI by U.S. mail on May 8, 2014.

**Exhibit 2**

(M) The second amended charge in Case 10-CA-124354 was filed by the NNOC against Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

6. (A) The original charge in Case 09-CA-102403 was filed by the United Steelworkers against Respondent Kentucky River on April 9, 2013, and a copy was served on Respondent Kentucky River by U.S. mail on April 10, 2013.

(B) The first amended charge in Case 09-CA-102403 was filed by the United Steelworkers against Respondent Kentucky River on May 20, 2015, and a copy was served on Respondent Kentucky River by U.S. mail on May 22, 2015.

(C) The original charge in Case 09-CA-105751 was filed by the United Steelworkers against Respondent Kentucky River on May 22, 2013, and a copy was served on Respondent Kentucky River by U.S. mail on May 23, 2013.

(D) The first amended charge in Case 09-CA-105751 was filed by the United Steelworkers against Respondent Kentucky River on May 20, 2015, and a copy was served on Respondent Kentucky River by U.S. mail on May 22, 2015.

(E) The original charge in Case 09-CA-129151 was filed by the United Steelworkers against Respondent Kentucky River on May 21, 2014, and a copy was served on Respondent Kentucky River by U.S. mail on May 22, 2014.

(F) The first amended charge in Case 09-CA-129151 was filed by the United Steelworkers against Respondent Kentucky River, Respondent CHSI and Respondent CHSPSC, on May 20, 2015, and a copy was served on Respondent Kentucky River, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

## Exhibit 2

(G) The original charge in Case 09-CA-131638 was filed by the United Steelworkers against Respondent Kentucky River on June 25, 2014, and a copy was served on Respondent Kentucky River by U.S. mail on June 27, 2014.

(H) The first amended charge in Case 09-CA-131638 was filed by the United Steelworkers against Respondent Kentucky River on July 24, 2014, and a copy was served on Respondent Kentucky River by U.S. mail on July 28, 2014.

(I) The second amended charge in Case 09-CA-131638 was filed by the United Steelworkers against Respondent Kentucky River, Respondent CHSI and Respondent CHSPSC on May 20, 2015, and a copy was served on Respondent Kentucky River, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(J) The original charge in Case 09-CA-133951 was filed by the United Steelworkers against Respondent Kentucky River on August 1, 2014, and a copy was served on Respondent Kentucky River by U.S. mail on August 4, 2014.

(K) The first amended charge in Case 09-CA-133951 was filed by the United Steelworkers against Respondent Kentucky River on May 20, 2015, and a copy was served on Respondent Kentucky River by U.S. mail on May 22, 2015.

7. (A) The original charge in Case 32-CA-120642 was filed by the CNA against Respondent Watsonville on January 15, 2014, and a copy was served on Respondent Watsonville by U.S. mail on January 15, 2014.

(B) The first amended charge in Case 32-CA-120642 was filed by the CNA on May 20, 2015 against Respondent Watsonville, Respondent CHSI and Respondent CHSPSC and a copy was served on Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on May 21, 2015.

(C) The original charge in Case 32-CA-124332 was filed by the CNA against Respondent Watsonville on March 12, 2014, and a copy was served on Respondent Watsonville by U.S. mail on March 13, 2014.

(D) The first amended charge in Case 32-CA-124332 was filed by the CNA against Respondent Watsonville and Respondent CHSI on May 8, 2014, and a copy was served on Respondent Watsonville and Respondent CHSI by U.S. mail on May 9, 2014.

(E) The second amended charge in Case 32-CA-124332 was filed by the CNA against Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Watsonville, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 21, 2015.

8. (A) At all material times, Respondent Affinity, has been a Delaware limited liability company with an office and place of business in Massillon, Ohio, (Massillon facility or Affinity facility), and has been engaged in the operation of an acute care hospital providing inpatient and outpatient care.

(B) At all material times, Respondent Barstow has been a corporation with an office and place of business in Barstow, California (Barstow facility), and has been engaged in the operation of an acute care hospital providing inpatient and outpatient care.

(C) At all material times, Respondent Bluefield has been a limited liability company with an office and place of business in Bluefield, West Virginia (Bluefield facility), and has been engaged in the operation of an acute-care hospital providing inpatient and outpatient care.

(D) At all material times, Respondent Fallbrook has been a Delaware corporation, and until approximately December 31, 2014, it maintained its principal offices and

place of business in Fallbrook, California (Fallbrook facility), and was engaged in the operation of an acute care hospital providing healthcare services.

(E) At all material times, Respondent Greenbrier has been a limited liability company with an office and place of business in Ronceverte, West Virginia (Greenbrier Valley Medical Center or Greenbrier facility), and has been operating an acute-care hospital providing inpatient and outpatient care.

(F) At all material times, Respondent Kentucky River has been a Kentucky corporation with an office and place of business in Jackson, Kentucky (Kentucky River facility), and has been operating a full service hospital providing inpatient and outpatient medical care.

(G) At all material times, Respondent Watsonville has been a Delaware corporation with an office and place of business in Watsonville, California, (Watsonville facility), and has been operating a hospital providing inpatient and outpatient medical care.

(H) At all material times, Respondent CHSI, which operates as a holding company, has been a Delaware corporation with its principal office and place of business in Franklin, Tennessee, and with offices and places of businesses in Massillon, Ohio; Barstow, California; Bluefield, West Virginia; Fallbrook, California; Ronceverte, West Virginia; Jackson, Kentucky; and Watsonville, California, where it is engaged in the operation of acute care hospitals providing inpatient and outpatient care.

(I) Since about January 1, 2015, Respondent CHSPSC has been a limited liability company and at all material times, Respondent CHSPSC has been a wholly owned subsidiary of Respondent CHSI with an office and place of business in Franklin, Tennessee, and with offices and places of businesses in Massillon, Ohio; Barstow, California; Bluefield, West Virginia;

Fallbrook, California; Ronceverte, West Virginia; Jackson, Kentucky; and Watsonville, California, where it is engaged in the operation of acute care hospitals providing inpatient and outpatient care.

(J) Since on or about January 1, 2014, Quorum Health Resources, LLC has been a limited liability company and at all material times, Quorum Health Resources, LLC has been a subsidiary of Respondent CHSI with an office and place of business in Brentwood, Tennessee, and with offices and places of businesses in Charlotte, North Carolina and Frisco, Texas where it is engaged in providing management services and the operation of acute care hospitals providing inpatient and outpatient care.

9. (A) At all material times, Respondent Affinity and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 9(A), Respondent Affinity and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Affinity and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 9(C), Respondent Affinity and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

10. (A) At all material times, Respondent Barstow and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as



billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 10(A), Respondent Barstow and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Barstow and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 10(C), Respondent Barstow and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

11. (A) At all material times, Respondent Bluefield and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have

interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 11(A), Respondent Bluefield and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Bluefield and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 11(C), Respondent Bluefield and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

12. (A) At all material times, Respondent Fallbrook and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 12(A), Respondent Fallbrook and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Fallbrook and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory

programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 12(C), Respondent Fallbrook and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

13. (A) At all material times, Respondent Greenbrier and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 13(A), Respondent Greenbrier and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Greenbrier and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 13(C), Respondent Greenbrier and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

14. (A) At all material times, Respondent Kentucky River and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting,

physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 14(A), Respondent Kentucky River and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Kentucky River, with Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 14(C), Respondent Kentucky River and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

15. (A) At all material times, Respondent Watsonville and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have

interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 15(A), Respondent Watsonville and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Watsonville and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 15(C), Respondent Watsonville and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

16. (A) At all material times, Respondent CHSPSC and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 16(A), Respondent CHSPSC and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

17. (A) (1) At all material times, Respondent CHSI and Respondent Affinity have been parties to a contract which provides that Respondent Affinity is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Affinity, and administered a common labor policy for Respondent Affinity's employees.

(3) At all material times, Respondent CHSI and Respondent Affinity have been joint employers of the employees of Respondent Affinity.



## Exhibit 2

(B) (1) At all material times, Respondent CHSPSC and Respondent Affinity have been parties to a management services agreement which provides that Respondent Affinity is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Affinity, and administered a common labor policy for Respondent Affinity's employees.

(3) At all material times, Respondent CHSPSC and Respondent Affinity have been joint employers of the employees of Respondent Affinity.

18. (A) (1) At all material times, Respondent CHSI and Respondent Barstow have been parties to a contract which provides that Respondent Barstow is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Barstow and administered a common labor policy for Respondent Barstow's employees.

(3) At all material times, Respondent CHSI and Respondent Barstow have been joint employers of the employees of Respondent Barstow.

(B) (1) At all material times, Respondent CHSPSC and Respondent Barstow have been parties to a management services agreement which provides that Respondent Barstow is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

## Exhibit 2

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Barstow and administered a common labor policy for Respondent Barstow's employees.

(3) At all material times, Respondent CHSPSC and Respondent Barstow have been joint employers of the employees of Respondent Barstow.

19. (A) (1) At all material times, Respondent CHSI and Respondent Bluefield have been parties to a contract which provides that Respondent Bluefield is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Bluefield and administered a common labor policy for Respondent Bluefield's employees.

(3) At all material times, Respondent CHSI and Respondent Bluefield have been joint employers of the employees of Respondent Bluefield.

(B) (1) At all material times, Respondent CHSPSC and Respondent Bluefield have been parties to a management services agreement which provides that Respondent Bluefield is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Bluefield and administered a common labor policy for Respondent Bluefield's employees.

(3) At all material times, Respondent CHSPSC and Respondent Bluefield have been joint employers of the employees of Respondent Bluefield.

## Exhibit 2

20. (A) (1) At all material times, Respondent CHSI and Respondent Fallbrook have been parties to a contract which provides that Respondent Fallbrook is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Fallbrook and administered a common labor policy for Respondent Fallbrook's employees.

(3) At all material times, Respondent CHSI and Respondent Fallbrook have been joint employers of the employees of Respondent Fallbrook.

(B) (1) At all material times, Respondent CHSPSC and Respondent Fallbrook have been parties to a management services agreement which provides that Respondent Fallbrook is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Fallbrook and administered a common labor policy for Respondent Fallbrook's employees.

(3) At all material times, Respondent CHSPSC and Respondent Fallbrook have been joint employers of the employees of Respondent Fallbrook.

21. (A) (1) At all material times, Respondent CHSI and Respondent Greenbrier have been parties to a contract which provides that Respondent Greenbrier is the agent of Respondent CHSI, in connection with the operation of the acute care hospitals providing inpatient and outpatient care.

## Exhibit 2

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Greenbrier and administered a common labor policy for Respondent Greenbrier's employees.

(3) At all material times, Respondent CHSI and Respondent Greenbrier have been joint employers of the employees of Respondent Greenbrier.

(B) (1) At all material times, Respondent CHSPSC and Respondent Greenbrier have been parties to a management services agreement which provides that Respondent Greenbrier is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Greenbrier and administered a common labor policy for Respondent Greenbrier's employees.

(3) At all material times, Respondent CHSPSC and Respondent Greenbrier have been joint employers of the employees of Respondent Greenbrier.

22. (A) (1) At all material times, Respondent CHSI and Respondent Kentucky River have been parties to a contract which provides that Respondent Kentucky River is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Kentucky River and administered a common labor policy for Respondent Kentucky River's employees.

(3) At all material times, Respondent CHSI and Respondent Kentucky River have been joint employers of the employees of Respondent Kentucky River.

## Exhibit 2

(B) (1) At all material times, Respondent CHSPSC and Respondent Kentucky River have been parties to a management services agreement which provides that Respondent Kentucky River is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Kentucky River and administered a common labor policy for Respondent Kentucky River's employees.

(3) At all material times, Respondent CHSPSC and Respondent Kentucky River have been joint employers of the employees of Respondent Kentucky River.

23. (A) (1) At all material times, Respondent CHSI and Respondent Watsonville have been parties to a contract which provides that Respondent Watsonville is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Watsonville and administered a common labor policy for Respondent Watsonville's employees.

(3) At all material times, Respondent CHSI and Respondent Watsonville have been joint employers of the employees of Respondent Watsonville.

(B) (1) At all material times, Respondent CHSPSC and Respondent Watsonville have been parties to a management services agreement which provides that Respondent Watsonville is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

## Exhibit 2

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Watsonville and administered a common labor policy for Respondent Watsonville's employees.

(3) At all material times, Respondent CHSPSC and Respondent Watsonville have been joint employers of the employees of Respondent Watsonville.

24. (A) (1) Annually, Respondent Affinity, in conducting its business operations described above in paragraph 8(A), has derived gross revenue in excess of \$250,000.

(2) Annually, Respondent Affinity, in conducting its business operations described above in paragraph 8(A), purchases and receives at its Massillon facility goods valued in excess of \$50,000 directly from points outside the State of Ohio.

(3) At all material times, Respondent Affinity has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(B) (1) Annually, Respondent Barstow, in conducting its business operations described above in paragraph 8(B), has derived gross revenue in excess of \$250,000.

(2) Annually, Respondent Barstow in conducting its business operations described above in paragraph 8(B), purchases and receives at its Barstow facility products, goods and materials valued in excess of \$50,000 directly from points outside the State of California.

(3) At all material times, Respondent Barstow has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(C) (1) Annually, Respondent Bluefield, in conducting its business operations described above in paragraph 8(C), has derived gross revenue in excess of \$250,000.

•

(2) Annually, Respondent Bluefield in conducting its business operations described above in paragraph 8(C), purchases and receives at its Bluefield facility, goods and materials valued in excess of \$50,000 directly from points outside the State of West Virginia.

(3) At all material times, Respondent Bluefield has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(D) (1) Annually, Respondent Fallbrook, in conducting its business operations described above in paragraph 8(D), has derived gross revenue in excess of \$250,000.

(2) During the 12-month period ending December 31, 2014, a representative period, Respondent Fallbrook, in conducting its business operations described above in paragraph 8(D), purchased and received at the Fallbrook facility, goods valued in excess of \$50,000 directly from points outside the State of California.

(3) At all material times, Respondent Fallbrook has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(E) (1) Annually, Respondent Greenbrier, in conducting its business operations described above in paragraph 8(E), has derived gross revenue in excess of \$250,000.

(2) Annually, Respondent Greenbrier in conducting its business operations, purchases and receives at its Greenbrier facility, goods and materials valued in excess of \$50,000 directly from points outside the State of West Virginia.

(3) At all material times, Respondent Greenbrier has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

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(F) (1) Annually, Respondent Kentucky River, in conducting its business operations described above in paragraphs 8(F), has derived gross revenue in excess of \$250,000.

(2) At all material times, Respondent Kentucky River during the past 12-month period ending July 1, 2015, in conducting its business operations described above in paragraph 8(F), purchased and received at its Jackson, Kentucky facility goods and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky.

(3) At all material times, Respondent Kentucky River has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(G) (1) Annually, Respondent Watsonville, in conducting its business operations described above in paragraph 8(G), has derived gross revenue in excess of \$250,000.

(2) During the past twelve months, Respondent Watsonville, in the course and conduct of its business operations, purchased and received goods at its Watsonville, California facility valued in excess of \$50,000, directly from points outside the State of California.

(3) During the past twelve months, Respondent Watsonville in conducting its business operations as described above in paragraph 8(G), received federal Medicare funds in excess of \$5,000.

(4) At all material times, Respondent Watsonville has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(H) (1) At all material times, Respondent CHSI, in conducting its business operations as described above in paragraph 8(H), has derived gross revenues in excess of \$250,000.



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(2) At all material times, Respondent CHSI, in conducting its business operations as described above in paragraph 8(H), has purchased and received at its Franklin, Tennessee office and place of business, goods and materials valued in excess of \$5000, directly from points located outside the State of Tennessee.

(3) At all material times, Respondent CHSI has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(I) (1) At all material times, Respondent CHSPSC, in conducting its business operations as described above in paragraph 8(I), has derived gross revenues in excess of \$250,000.

(2) At all material times, Respondent CHSPSC, in conducting its business operations as described above in paragraph 8(I), has purchased and received at its Franklin, Tennessee office and place of business, goods and materials valued in excess of \$5000, directly from points located outside the State of Tennessee.

(3) At all material times, Respondent CHSPSC has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

25. (A) At all material times, the NNOC has been a labor organization within the meaning of Section 2(5) of the Act.

(B) At all material times, the CNA/NNOC has been a labor organization within the meaning of Section 2(5) of the Act.

(C) At all material times, the CNA has been a labor organization within the meaning of Section 2(5) of the Act.

## Exhibit 2

(D) At all material times, the United Steelworkers has been a labor organization within the meaning of Section 2(5) of the Act.

26. (A) At all material times, an unnamed attorney has been an agent of Respondent Affinity within the meaning of Section 2(13) of the Act.

(B) At all material times, an unnamed attorney has been an agent of Respondent Barstow within the meaning of Section 2(13) of the Act.

(C) At all material times, an unnamed attorney has been an agent of Respondent Fallbrook within the meaning of Section 2(13) of the Act.

(D) At all material times, an unnamed attorney has been an agent of Respondent Kentucky River within the meaning of Section 2(13) of the Act.

(E) At all material times, an unnamed attorney has been an agent of Respondent CHSI within the meaning of Section 2(13) of the Act.

(F) At all material times, an unnamed attorney has been an agent of Respondent CHSPSC within the meaning of Section 2(13) of the Act.

27. (A) At all material times the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent Affinity within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

|                         |   |
|-------------------------|---|
| Angela Boyle            | Vice President of Human Resources           |
| Kylie Drake             | Assistant Human Resources                   |
| Paula Zinsmeister       | Manager, Orthopedic Unit                    |
| Susan Kress             | Manager, Cardiovascular Intensive Care Unit |
| William (Bill) Osterman | Chief Nursing Officer                       |

|             |                             |
|-------------|-----------------------------|
| Nancy Davis | Intensive Care Unit Manager |
|-------------|-----------------------------|

|                 |                  |
|-----------------|------------------|
| Maureen Piersol | Nurse Supervisor |
|-----------------|------------------|

(B) At all material times, Jan Ellis held the position of Human Resources Representative, and has been an agent of Respondent Affinity, Respondent CHSI and/or an agent of Respondent CHSPSC, within the meaning of Section 2(13) of the Act.

28. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Barstow within the meaning of Section 2(11) of the Act and/or agents within the meaning of Section 2(13) of the Act.

|                        |                                |
|------------------------|--------------------------------|
| Laura Elliot           | Human Resources Director       |
| Gwen [Surname unknown] | Human Resources Representative |
| Jeana Christensen      | Human Resources Generalist     |
| Michelle Miller        | Human Resources Representative |
| Carrie Howell          | Chief Financial Officer        |
| Amy Trapp              | Assistant Director for the ICU |
| Donna Smith            | Chief Nursing Officer          |

29. (A) At all material times, an unnamed attorney has been the chief negotiator on behalf of Respondent Barstow in collective bargaining, and has been an agent within the meaning of Section 2(13) of the Act.

(B) At all material times, Jan Ellis held the position of Human Resources Representative, and has been an agent of Respondent Barstow, Respondent CHSI and/or an agent of Respondent CHSPSC within the meaning of Section 2(13) of the Act.

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30. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Bluefield within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

|                |                                    |
|----------------|------------------------------------|
| William Hawley | CEO                                |
| Richard Cox    | Director, Facilities Management    |
| Laura Martin   | Human Resources Manager            |
| Nancy Hawkins  | Nursing Director South             |
| Sandy Moritz   | Chief Nursing Officer              |
| Paula Thompson | Director of Surgical Services      |
| Alisha Miller  | Director of Occupational Medicine  |
| Tammy Yost     | Director, Day Surgery              |
| Brenda Scruggs | Director, Day Surgery              |
| Frances Grouse | Shift Director                     |
| Betty Price    | Shift Director                     |
| Angie Davidson | Quality Risk Manager               |
| Jerry Crumby   | Supervisor, Environmental Services |
| Kathy Glover   | Nurse Manager OB                   |

31. At all material times, a security guard working at Bluefield's facility, whose name is presently unknown, has been an agent of Respondent Bluefield within the meaning of Section 2(13) of the Act.

32. (A) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Fallbrook within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

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|                            |                                |
|----------------------------|--------------------------------|
| Debra Hodges               | Director of Inpatient Services |
| John Coker                 | CHS Representative             |
| Janet Colvart              | Chief Nursing Officer          |
| Kirkpatrick (Kapua) Conley | Chief Executive Officer        |

(B) At all material times, Jan Ellis held the position of Human Resources Representative, and has been an agent of Respondent Fallbrook, Respondent CHSI and/or an Respondent CHSPSC within the meaning of Section 2(13) of the Act.

33. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Greenbrier within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

|                 |  |
|-----------------|--|
| Connie Rose     | Emergency Department Director                    |
| Charlene Warren | Chief Nursing Officer                            |
| Paul Hanna      | Human Resources Director                         |
| Tammy Lilly     | Intensive Care Unit Director                     |
| Tom Flis        | Nursing Director,<br>Medical/Surgical/Pediatrics |
| Bobbi Lockard   | Manager  |

34. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Kentucky River within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

|                |  |
|----------------|--|
| James Carmody  | Senior Director, Human Resources &<br>Employee Relations |
| Naomi Mitchell | Human Resources Director                                 |

35. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Watsonville within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Audra Earl                      Chief Executive Officer

Jeri Gilbert                    Human Resources Director

36. (A) The following rule has been maintained and is contained in Employee Handbooks, under the heading “Solicitation and Distribution of Literature”:

Employees who are not on working time (e.g., those on lunch or breaks) may not solicit, including by e-mail or other telephone communication systems, employees who are on working time for any cause or distribute literature of any kind to them. Furthermore, employees may not distribute literature or printed material of any kind in working areas at any time. The term “working areas” refers to any area of the Hospital in which any employee regularly performs his or her assigned job duties.

- (1) By Respondent Affinity since on or about June 4, 2014.
- (2) By Respondent Barstow since on or about June 6, 2014.
- (3) By Respondent Fallbrook since on or about June 4, 2014.
- (4) By Respondent Greenbrier since on or about June 9, 2014.
- (5) By Respondent Watsonville since on or about June 5, 2014.

(B) The following rule has been maintained and is contained in Employee Handbooks, under the heading “E-mail, Internet & Electronic Systems Access”:

E-mail and Internet resources are shared by all CHSI affiliated entities, and shall be used only by authorized users in the performance of their assigned job duties. Responsible, incidental personal use is acceptable provided (1) it does not interfere with the performance of your job duties or another employee’s job duties, (2) the resources are not used in a manner that limits or

impedes their use or access for legitimate business purposes, or (3) it does not violate this or any other facility policy. [. .]

Without prior written permission from the Facility CEO the facility's electronic systems, including e-mail and Internet, may not be used for the dissemination or storage of commercial or personal advertisements, solicitations, promotions, destructive programs (i.e., viruses or self-replicating code), political material, or any other unauthorized use. Material that is embarrassing, intimidating, defamatory or inappropriate may not be sent by the facility's computer system, including email, or accessed by the facility's computer system, including any internet connection provided by the facility, or displayed on or stored in facility computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor.

- (1) By Respondent Affinity since on or about June 4, 2014.
- (2) By Respondent Barstow since on or about June 6, 2014.
- (3) By Respondent Fallbrook since on or about June 4, 2014.
- (4) By Respondent Greenbrier since on or about June 9, 2014.
- (5) By Respondent Watsonville since on or about June 5, 2014.

(C) The following rule has been maintained and is contained in Employee Handbooks, under the heading "Personal Web Sites and Blogs":

Employees may use personal web sites and web logs (blogs) during their personal (non-work) time. If an employee chooses to identify himself or herself as an employee on a personal web site or web log (blog), he or she must adhere to the following guidelines:

- That the views expressed are solely the employee's and not necessarily those of the Facility.
- (1) By Respondent Affinity since about June 4, 2015.
  - (2) By Respondent Barstow since on or about June 6, 2015.

## Exhibit 2

(3) By Respondent Fallbrook since on or about June 4, 2015.

(4) By Respondent Watsonville since on or about June 5, 2015.

(D) The following rule has been maintained and is contained in Employee Handbooks under the heading “Conduct That May Result in Disciplinary Action”:

It is not possible to list all acts or misconduct that may result in disciplinary action. The following list is merely a guideline of some of the more obvious types of acts or misconduct which may result in disciplinary action, up to and including termination. [ . . ]

Other behavior that will result in disciplinary action, up to and including termination: [ . . ]

- Inappropriate use of e-mail, Internet access, personal web sites and web logs (blogs).

(1) By Respondent Affinity since on or about June 4, 2014.

(2) By Respondent Barstow since on or about June 6, 2014.

(3) By Respondent Fallbrook since on or about June 4, 2014.

(4) By Respondent Watsonville since on or about June 5, 2014.

37. At all material times until about June 4, 2014, Respondent Affinity has:

(A) Maintained in the Affinity Employee Handbook, under the heading “Solicitation and Distribution of Literature” the following rule, in relevant part:

Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via e-mail or other telephonic communication systems.



(B) Maintained in the Affinity Employee Handbook, under the heading “E-mail, Internet & Electronic Systems Access” the following rule, in relevant part:

E-mail and Internet resources are shared by all CHSI affiliated entities, and shall be used only by authorized users in the performance of their assigned job duties. Responsible, incidental personal use is acceptable provided (1) it does not interfere with the performance of your job duties or another employee’s job duties, (2) the resources are not used in a manner that limits or impedes their use or access for legitimate business purposes, or (3) it does not violate this or any other facility policy. [ . . ]

Without prior written permission from the CHSPSC Chief Information Officer, the facility’s computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of solicitations political material [ . . ]. Material that is fraudulent, harassing embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed on or stored in facility computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor or the CHSPSC Chief Information Officer.

(C) Maintained in the Affinity Employee Handbook, under the heading “Personal Web Sites and Blogs, the following rule, in relevant part:

Employees may use personal web sites and web logs (blogs) during their personal time but not during work hours. If an employee chooses to identify himself or herself as an employee of a CHSI affiliated entity on a personal web site or web log (blog), he or she must adhere to the following guidelines: [ . . ]

- Avoid making defamatory statements about CHSI affiliated entity [sic], its employees, clients and others, including competitors.
- Blogging (writing an employee’s own blog or reading those created by others) is prohibited during working hours.

If CHSPSC or Affinity Medical Center determines, in its sole discretion, that blogging activity may compromise CHSPSC or Affinity Medical Center, the employee may be asked to

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immediately cease such commentary and the employee may be subject to disciplinary action, up to and including termination.

(D) Maintained in the Affinity Employee Handbook under the heading

“Conduct That May Result in Disciplinary Action” the following rule, in relevant part:

It is not possible to list all acts or misconduct that may result in disciplinary action. The following list is merely a guideline of some of the more obvious types of acts or misconduct which may result in disciplinary action, up to and including termination.

Behavior that will result in immediate termination: [ . . ]

- Violation of patient confidentiality or disclosure of confidential employee records [ . . ]

Other behavior that will result in disciplinary action, up to and including termination: [ . . ]

- Inappropriate use of e-mail, Internet access, personal web sites and web logs (blogs).

(E) Maintained in the Affinity Code of Conduct under the heading

“Electronic Media, Records and Documents,” the following rule, in relevant part:

[ . . ] Unless authorized, never send or forward such information via email unless approval has been granted by the CHSPSC Security Officer. Colleagues must not use the organization’s electronic media to distribute or transmit any threatening, malicious, false or obscene materials.

(F) Maintained in the Community Health Systems Code of Conduct under the

heading “Electronic Media, Records and Documents,” the following rule, in relevant part:

[ . . ] Unless authorized, never send or forward confidential information via email unless approval has been granted by the Corporate Security Officer. Colleagues may not use the organization’s electronic media to distribute or transmit any false materials.

38. Since about August 22, 2013, Respondent Affinity has maintained and enforced the following rule:

All hospital employees and staff have the responsibility to exercise the chain of command during any event or situation that does not meet established guidelines or that places patients, guests or employees at risk. Employees with concerns or issues are to notify the shift supervisor/manager.

39. At all material times, Respondent Affinity has maintained in its Employee Handbook under the heading “Community Cares Customer Service,” the following rule, in relevant part:

Our patients are our customers, and they should be treated as welcome guests in our facilities. The facility expects employees to show courtesy, compassion and respect for all guests. In particular, employees should adhere to the following: [ . ]

- Never make negative comments of any kind where patients can hear.

40. Since about March 12, 2014, Respondent Barstow has maintained the following rules in its Employee Handbook:

(A) The “Solicitation and Distribution of Literature” rule that provides, in relevant part:

Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via e-mail or other telephonic communication systems.

(B) The “E-mail, Internet & Electronic System Access” rule that provides, in relevant part:

E-mail and Internet resources shared by all CHS facilities, and shall be used only by authorized users in the performance of their assigned job duties. Responsible, incidental personal use is acceptable [ . ]. Without prior written permission from CHS Chief Information Officer, the facility’s computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of commercial or personal

advertisements, solicitations, promotions, destructive programs (i.e. viruses or self-replicating code), political material, or any other unauthorized use. Material that is fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed on or stored in CHS computers.

(C) The “Personal Websites and Blogs” rule that provides, in relevant part,

CHS respects the right of employees to use personal web sites and web logs (blogs) during their personal time but not during work hours. If an employee chooses to identify himself or herself as an employee of CHS or an affiliate on a personal web site or web log (blog), he or she must adhere to the following guidelines:

[. .]

Avoid making defamatory statements about CHS, its affiliates, employees, clients and others, including competitors.

[. .]

Blogging (writing an employee’s own blog or reading those created by others) is prohibited during working hours.

[. .]

If CHS determines, in its sole discretion, that blogging activity may compromise CHS or an affiliate, CHS may request an immediate cessation of such commentary and the employee may be subject to disciplinary action, up to and including termination.

(D) The “Conduct That May Result in Disciplinary Action”

rule that provides, in relevant part:

Other behavior that will result in disciplinary action, up to and including termination:

[. .]

Immoral or indecent conduct, in the judgment of the facility

[. .]

Inappropriate use of e-mail, Internet access, personal web sites and web logs (blogs).

(E) The “Community Cares Culture” rule that provides, in relevant part:

Our patients are our customers, and they should be treated as welcome guests in our facilities. The facility expects employees to show courtesy, compassion and respect for all guests. In particular, employees should adhere to the following: [. .] Never make negative comments of any kind where patients can hear.

41. (A) Since about March 12, 2014 through around May 20, 2014, Respondent Barstow has maintained the “Electronic Media, Records, and Documents” rule which is contained in the Community Health Systems Code of Conduct, that provides, in relevant part,

Colleagues must not use the organization’s electronic media to distribute or transmit any threatening, malicious, false, or obscene materials.

(B) Since about March 12, 2014, Respondent Barstow has maintained the “Electronic Media, Records, and Documents” rule in the Community Health Systems Code of Conduct, that provides, in relevant part:

[. .] Personal electronic devices are not to be used for any recording or photography absent prior written approval by facility management for each instance.

42. (A) At all material times, Respondent Bluefield maintained in its Employee Handbook, under the heading “Solicitation and Distribution of Literature,” the following rule, in relevant part:

[E]mployees may not distribute literature or printed material of any kind in working areas at any time.

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(B) At all material times, Respondent Bluefield maintained in its Employee Handbook, under the heading “Email, Internet and Electronic Systems Access,” the following rule, in relevant part:

Without prior written permission from the CHSPSC Chief Information Officer, the facility’s computer system, including the email and internet facilities, may not be used for the dissemination or storage of commercial or personal advertisements, solicitations, promotions, destructive purposes (i.e. viruses or self-replicating code), political material, or any other unauthorized use. Material that is harassing, embarrassing intimidating defamatory, or otherwise unlawful or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed on or stored in CHS computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor or the CHSPSC Chief Information Officer.

(C) At all material times, Respondent Bluefield maintained in its Code of Conduct, under the heading “Electronic Media, Records and Documents,” the following rule, in relevant part:

Colleagues must not use the organization’s electronic media to distribute or transmit any false materials.

(D) At all material times, Respondent Bluefield has maintained in its Employee Handbook, under the heading “Email, Internet and Electronic Systems Access,” the following rule, in relevant part:

Without prior permission from the CHSPSC Chief Information Officer, the facility’s computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of commercial or personal solicitations political material or any other unauthorized use.

(E) At all material times, Respondent Bluefield has maintained in its Employee Handbook, under the heading “Personal Web Sites and Blogs,” the following rule, in relevant part:

BRMC respects the right of employees to use personal web sites and web logs (blogs) during their personal time but not during work hours. If an employee chooses to identify himself or herself as an employee of a CHSI affiliated entity on a personal web site or web log (blog), he or she must adhere to the following guidelines:

- Avoid making defamatory statements about CHSI affiliated entity, employees, clients and other, including competitors.
- Blogging (writing an employee's own blog or reading those created by others) is prohibited during working hours.

If CHSPSC or the facility determines, in its sole discretion, that blogging activity may compromise CHSPSC or a CHSI affiliate, the employee may be asked to immediately cease such commentary and the employee may be subject to disciplinary action, up to and including termination.

(F) Since about June 4, 2015, Respondent Bluefield maintained unlawfully broad work rules.

43. Since at least on or about September 12, 2013, to about June 4, 2014, Respondent Fallbrook, maintained in its Employee Handbook, the following "Solicitation and Distribution of Literature" rule:

In the interest of maintaining a proper business environment and preventing interference with work and inconvenience to others, employees may not distribute literature or printed materials of any kind, sell merchandise, solicit financial contributions, or solicit for any cause during working time. Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via email or other telephonic communication systems. Furthermore, employees may not distribute literature or printed material of any kind in working areas at any time.

Individuals not employed by the facility may not solicit or distribute literature on Facility premises at any time, except for persons engaged in bona fide business-related activities such as pharmaceutical and medical equipment sales as permitted by the facility.

44. Since at least on or about September 12, 2013, to about June 4, 2014, Respondent Fallbrook, maintained in its Employee Handbook, the following “E-mail and Internet Access” rule:

E-mail and Internet resources are shared by all CHS facilities and shall be used only by authorized users in the performance of their assigned job duties. Responsible, incidental personal use is acceptable provided (1) it does not interfere with the performance of your job duties or another employee's job duties, (2) the resources are not used in a manner that limits or impedes their use or access for legitimate business purposes, or (3) it does not violate this or any other facility policy.

[. .]

Without prior written permission from the CHS Chief Information Officer, the facility's computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of commercial or personal advertisements, solicitations, promotions, destructive programs (i.e., viruses or self-replicating code), political material, or any other unauthorized use. Material that is fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed on or stored in CHS computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor or the CHS Chief Information Officer.

45. Since at least on or about November 8, 2013, to about June 4, 2014, Respondent Fallbrook maintained in its Employee Handbook, the following “Conduct That May Result in Disciplinary Action” rule:

It is not possible to list all acts or misconduct that may result in disciplinary action. The following list is merely a guideline of some of the more obvious types of acts or misconduct which may result in disciplinary action, up to and including termination. Behavior that will result in immediate termination:

- Violation of patient confidentiality or disclosure of confidential employee records.



46. Since at least on or November 8, 2013, Respondent Fallbrook maintained in its Employee Handbook, the following “Community Cares Customer Service” rule:

Our patients are our customers, and they should be treated as welcome guests in our facilities. The Hospital expects employees to show courtesy, compassion and respect for all guests. In particular, you should adhere to the following:

- Never make negative comments of any kind where patients can hear.

47. Since at least on or about September 12, 2013, to about June 4, 2014, Respondent Fallbrook, maintained in the Community Health Systems Code of Conduct, the following “Electronic Media, Records, and Documents” rule:

Many different types of media are used by the organization to create, store, maintain, and communicate information. Electronic media such as telephones, other communications systems, e-mail, Internet access, and voice mail are provided to colleagues for business use. Since these electronic media are the property of the organization, colleagues should assume these communications are not private and may be monitored. Any patient and/or confidential information must not be conveyed by any media sources unless appropriate security measures are in place. Unless authorized, never send or forward confidential information via email unless approval has been granted by the Corporate Security Officer. Colleagues must not use the organization's electronic media to distribute or transmit any threatening, malicious, false, or obscene materials. Personal electronic devices are not to be used for any recording or photography absent prior written approval by facility management for each instance.

48. (A) At all material times until on or about June 9, 2014, Respondent Greenbrier maintained in its Employee Handbook, under the heading “Solicitation and Distribution of Literature,” the following rule, in relevant part:

Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via e-mail or other telephonic

communication systems. Furthermore, employees may not distribute literature or printed material of any kind in working areas at any time.

(B) At all material times until about June 9, 2015, Respondent Greenbrier maintained in its Employee Handbook, under the heading “Email, Internet, and Electronic System Access,” the following rule, in relevant part:

Without prior written permission from the Facility CEO, electronic systems, including e-mail and the Internet, may not be used for the dissemination or storage of solicitations political material [ . .]. Material that is embarrassing intimidating, defamatory, or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed or stored in Facility computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor.

49. At all material times, Respondent Greenbrier maintained in its Employee Handbook, under the heading “Community Cares Customer Service,” the following rule, in relevant part:

Patients and visitors are customers to be treated as welcome guests. Employees are expected to show courtesy, compassion and respect to all patients and visitors. Never make negative comments of any kind where patients can hear.

50. At all material times until about May 20, 2014, Respondent Greenbrier maintained its Code of Conduct, under the heading “Electronic Media, Records, and Documents,” the following rule, in relevant part:

Colleagues must not use the organization’s electronic media to distribute or transmit any .false. .materials.

51. Since about March 13, 2014 to about June 5, 2015, Respondent Watsonville, maintained at its Watsonville facility, the following rules in the Watsonville Community Hospital Employee Handbook:

(A) The “Solicitation and Distribution of Literature” rule, in relevant part:

Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via e-mail or other telephonic communication systems.

(B) The “E-Mail, Internet & Electronic Systems Access” rule, in relevant part:

E-mail and Internet are shared resources and shall be used only by authorized users in the performance of their assigned job duties. Responsible, incidental personal use is acceptable provided (1) it does not interfere with the performance of your job duties or another employee’s job duties, (2) the resources are not used in a manner that limits or impedes their use or access for legitimate business purposes, or (3) it does not violate this or any other facility policy. [ . . ]

Without prior written permission from the Corporate Chief Information Officer, the facility’s computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of solicitations political material [ . . ]. Material that is embarrassing, intimidating, defamatory, or otherwise inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed on or stored in computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor or the Corporate Chief Information Officer.

(C) The “Personal Web Sites and Blogs” rule, in relevant part:

We respect the right of employees to use personal web sites and web logs (blogs) during their personal time but not during work hours. If an employee chooses to identify himself or herself as an employee of Facility or affiliated with CHS on a personal web site or web log (blog), he or she must adhere to the following guidelines: [ . . ]

- Avoid making false statements about the Facility, it [sic] affiliates, clients and others, including competitors.

## Exhibit 2

- Blogging (writing an employee's own blog or reading those created by others) is prohibited during working hours.

(D) The “Conduct That May Result in Disciplinary Action” rule, in relevant

part:

It is not possible to list all acts or misconduct that may result in disciplinary action. The following list is merely a guideline of some of the more obvious types of acts or misconduct which may result in disciplinary action, up to and including termination.

Behavior that will result in immediate termination: [ . . ]

- Violation of patient confidentiality or disclosure of confidential employee records [ . . ]

Other behavior that will result in disciplinary action, up to and including termination: [ . . ]

- Inappropriate use of e-mail, Internet access, personal web sites and web logs (blogs).

(E) The “Community Cares” rule, in relevant part:

Our patients are our customers, and they should be treated as welcome guests in our facilities. The facility expects employees to show courtesy, compassion and respect for all guests. In particular, employees should adhere to the following: [ . . ]

- Never make negative comments of any kind where patients can hear.

52. Since about March 13, 2014 to about June 5, 2014, Respondent Watsonville maintained the following rule in the Community Health Systems Code of Conduct, in relevant part:

[ . . ] Unless authorized, never send or forward such information via email unless approval has been granted by the CHSPSC Security Officer. Colleagues must not use the organization’s electronic media to distribute or transmit any threatening, malicious, false or obscene materials.

53. About September 18, 2013, Respondent Affinity, by Nancy Davis, at its Massillon facility:

(A) Coercively removed ‘assignment despite objection’ forms from employees’ mailboxes.

(B) Coercively informed an employee that she removed ‘assignment despite objection’ forms from employees’ mailboxes.

54. About June 10, 2014, Respondent Affinity at its Massillon facility:

(A) By Nancy Davis, denied its employee Barbara Rowe’s request to be represented by the NNOC during an interview.

(B) Employee Rowe had reasonable cause to believe that the interview described above in paragraph 54(A) would result in disciplinary action being taken against her.

(C) Respondent Affinity, by Davis, conducted the interview described above in paragraph 54(A), even though Respondent Affinity denied employee Rowe’s request for union representation as described above in paragraph 54(A).

55. (A) During the period from about June 13, 2013 to June 26, 2014, Respondent Barstow filed and maintained a Complaint against the CNA/NNOC in the United States District Court for the Central District of California (District Court) in the matter of *Hospital of Barstow, Inc. vs. California Nurses Association/National Nurses Organizing Committee*, case number 5:13-cv-01063(DTB) (lawsuit) in a cause of action arising under Section 301 of the Labor Management Relations Act that sought to sanction the CNA/NNOC for filing unfair labor practice charges and preclude the CNA/NNOC from filing or processing such charges.

(B) (1) The lawsuit, described above in paragraph 55(A), sought to enforce an unwritten purported agreement to arbitrate between the CNA/NNOC and Respondent Barstow.

(2) The lawsuit, described above in paragraph 55(A), is baseless and failed to plead the existence of the purported unwritten agreement between the CNA/NNOC, as described above in paragraph 55(B)(1).

(3) The lawsuit, described above in paragraph 55(A), asserted that the CNA/NNOC breached the purported written agreement to arbitrate, as described above in paragraph 55(B)(1), because the CNA/NNOC filed unfair labor practice charges with the Board.

(C) Respondent Barstow filed the lawsuit, described above in paragraphs 55(A) and 55(B) and its subparagraphs, with a retaliatory motive because it seeks to enjoin activity protected by the Act.

56. Respondent Bluefield, by the individuals named below, at Bluefield's facility, on about the dates opposite their names, prohibited employees from engaging in distribution during non-working time in outside non-work areas:

| <u>Agent</u>       | <u>Date</u>                       |
|--------------------|-----------------------------------|
| (A) Frances Grouse | May 20, 2013                      |
| (B) Jerry Cumby    | May 20, 2013 and<br>July 22, 2013 |
| (C) Richard Cox    | July 31, 2013                     |

57. Respondent Bluefield, by the individuals named below, on about the dates and at the specific location in or around Bluefield's facility, opposite their names, engaged in the surveillance of employees' union activities:

**Exhibit 2**

|     | <u>Agent</u>           | <u>Date</u>                    | <u>Location</u>                                |
|-----|------------------------|--------------------------------|--|
| (A) | Unnamed Security Guard | May 20, 2013                   | Inside areas of the Medical Center             |
| (B) | Jerry Cumby            | May 20, 2013 and July 22, 2013 | Inside and outside areas of the Medical Center |
| (C) | Richard Cox            | July 31, 2013                  | Outside areas of the Medical Center            |

58. Respondent Bluefield, by the individuals named below, at Bluefield's facility, on about the dates opposite their names, denied its off-duty employees access to parking lots and other outside non-working areas:

|     | <u>Agent</u>   | <u>Date</u>   |
|-----|----------------|---------------|
| (A) | Frances Grouse | May 20, 2013  |
| (B) | Jerry Cumby    | July 22, 2013 |
| (C) | Richard Cox    | July 31, 2013 |

59. Respondent Bluefield, by the individuals named below, at Bluefield's facility, on about the dates opposite their names, disparately denied its off-duty employees access to inside non-working areas:

|     | <u>Agent</u>           | <u>Date</u>                    |
|-----|------------------------|--------------------------------|
| (A) | Jerry Cumby            | May 20, 2013 and July 22, 2013 |
| (B) | Unnamed Security Guard | May 20, 2013                   |
| (C) | Richard Cox            | July 31, 2013                  |

60. About August 1, 2013, Respondent Bluefield, by Nancy Hawkins, at Bluefield's facility, prohibited employees from talking about the union during working time while permitting employees to talk about other non-work subjects.

61. About August 2012, Respondent Bluefield, by Paula Thompson, at Bluefield's facility, directed employees not to talk about the union while they were at work.

62. (A) About January 23, 2014, Respondent Fallbrook, by Debra Hodges, at the Fallbrook facility, denied the request of a union representative on behalf of employee Veronica Poss to be represented by the CNA/NNOC during an interview.

(B) Respondent Fallbrook's employee Poss had reasonable cause to believe that the interview described above in paragraph 62(A) would result in disciplinary action.

(C) About January 23, 2014, Respondent Fallbrook, by Debra Hodges and John Coker, at the Fallbrook facility, conducted the interview described above in paragraph 62(A), even though Respondent denied the union representative's request on behalf of employee Poss for union representation as described above in paragraph 62(A).

63. (A) About early February, 2014, Respondent Greenbrier, by Tom Flis, at the Greenbrier facility, threatened employees with unspecified reprisals for engaging in protected concerted and union activity, and prohibited employees from engaging in protected concerted or union activity.

(B) About February 21, 2014, Respondent Greenbrier, by Connie Rose, at Greenbrier's facility, threatened employees with unspecified reprisals for engaging in protected concerted and union activity, and prohibited employees from engaging in protected concerted or union activity.



## Exhibit 2

64. (A) On or about August 23, 2013, Respondent Affinity disciplined its employee Michelle Custer.

(B) (1) In or around early August 2013, the exact date being unknown, employee Michelle Custer complained about understaffing, and completed an 'assignment despite objection' form.

(2) The activities described above in paragraph 64(B)(1) concern employees' terms and conditions of work, are protected concerted activities, and/or implicate the concerns underlying Section 7 of the Act.

(3) Respondent Affinity enforced the rule, as described above in paragraph 38, by disciplining employee Custer, as described above in paragraph 64(A), because of employee Custer's activities, as described above in paragraphs 64(B)(1) and 64(B)(2).

(4) Respondent Affinity's conduct described above in paragraph 64(B)(3) interferes with, restrains and discourages employees from engaging in activities as described above in paragraphs 64(B)(1) and 64(B)(2).

(C) Respondent engaged in the conduct described above in paragraph 64(A) because the named employee formed, joined, assisted the NNOC and engaged in concerted activities, and to discourage employees from engaging in these activities.

65. (A) About August 2012, Respondent Bluefield issued a verbal warning to its employee Terri Kosinar.

(B) About November 9, 2012, Respondent Bluefield issued a written warning to its employee Terri Kosinar.

**Exhibit 2**

(C) About October 24, 2012, employee Terri Kosinar engaged in concerted activities with other employees for the purposes of mutual aid and protection by speaking out in a group meeting concerning Respondent Bluefield's hourly rounding policies.

(D) The subject described above in paragraph 65(C) relates to wages, hours, and other terms and conditions of employment of the Bluefield Unit and is a mandatory subject for the purposes of collective bargaining.

(E) Respondent Bluefield engaged in the conduct described above in paragraph 65(B) because Terri Kosinar engaged in the conduct described above in paragraph 65(C), and to discourage employees from engaging in these or other concerted activities.

(F) Respondent Bluefield engaged in the conduct described above in paragraphs 65(A) and (B) because Terri Kosinar assisted the NNOC and engaged in union and/or concerted activities, and to discourage employees from engaging in these activities.

66. (A) About January 17, and on about January 23, 2014, Respondent Greenbrier's employee Tara Evans concertedly complained to media outlets about the wages, hours and working conditions of Respondent Greenbrier's employees, specifically regarding Respondent Greenbrier's equipment, staffing levels, and safety issues.

(B) About April 4, 2014, Respondent Greenbrier failed to transfer its employee Tara Evans to a position in its Emergency Department.

(C) Respondent Greenbrier engaged in the conduct described above in paragraph 66(B) because Tara Evans engaged in the conduct described above in paragraph 66(A), and to discourage employees from engaging in these or other concerted activities.

(D) Respondent Greenbrier engaged in the conduct described above in paragraph 66(B) because Tara Evans assisted the NNOC and engaged in concerted activities, and to discourage employees from engaging in those activities.

67. (A) The following employees of Respondent Affinity constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the Affinity Unit):

All full-time and regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Affinity at its 875 Eighth Street N.E., Massillon, Ohio facility, but excluding all other employees, including managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to Respondent Affinity, already represented employees, guards and supervisors as defined in the Act, as amended.

(B) On October 5, 2012, the Board certified the NNOC as the exclusive collective bargaining representative of the Affinity Unit.

(C) At all times since October 5, 2012, based on Section 9(a) of the Act, the NNOC has been the exclusive collective-bargaining representative of the Affinity Unit.

68. (A) The following employees of Respondent Barstow constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the Barstow Unit):

**INCLUDED:** All full-time, regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Barstow at its facility located at 820 East Mountain View St., Barstow California 92311.

**EXCLUDED:** All other employees, including managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to Respondent Barstow, already represented employees, guards and supervisors as defined in the Act, as amended.

## Exhibit 2

(B) On June 29, 2012, the Board certified the CNA/NNOC as the exclusive collective-bargaining representative of the Unit.

(C) At all times since June 29, 2012, based on Section 9(a) of the Act, the CNA/NNOC has been the exclusive collective-bargaining representative of the Barstow Unit.

69. (A) The following employees of Respondent Bluefield constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the Bluefield Unit):

All full-time, regular part-time and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Bluefield at its 500 Cherry Street, Bluefield, West Virginia hospital; excluding all other employees, including managers, confidential employees, physicians, technical employees, service and maintenance employees, employees of outside registries and other agencies supplying labor to Respondent Bluefield, and guards and supervisors as defined in the Act.

(B) On August 29, 2012, a representation election was held pursuant to a consent election agreement, and on September 25, 2012, the Board certified the NNOC as the exclusive collective-bargaining representative of the Bluefield Unit.

(C) At all times since September 25, 2012, based on Section 9(a) of the Act, the NNOC has been the exclusive collective-bargaining representative of the Bluefield Unit.

70. (A) The following employees of Respondent Fallbrook constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the Fallbrook Unit):

All full-time, regular part-time, and per diem registered nurses, including those who serve as relief charge nurses, employed by Respondent Fallbrook at its facility located at 624 East Elder Street, Fallbrook, California; excluding all other employees, managers, confidential employees, physicians, employees of outside registries and other agencies

supplying labor to Respondent Fallbrook, already represented employees, guards and supervisors as defined in the Act.

(B) On May 24, 2012, the Board certified the CNA/NNOC as the exclusive collective-bargaining representative of the Fallbrook Unit.

(C) At all times since May 24, 2012, based on Section 9(a) of the Act, the CNA/NNOC has been the exclusive collective-bargaining representative of the Fallbrook Unit.

71. (A) The following employees of Respondent Greenbrier constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the Greenbrier Unit):

All full-time, regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Greenbrier at its 202 Maplewood Avenue, Ronceverte, West Virginia hospital; excluding all other employees, including managers, confidential employees, physicians, technical employees, service and maintenance employees, employees of outside registries and other agencies supplying labor to Respondent Greenbrier, guards and supervisors as defined in the Act.

(B) On August 30, 2012, a representation election was held pursuant to a consent election agreement, and on September 25, 2012, the Board certified the NNOC as the exclusive collective-bargaining representative of the Greenbrier Unit.

(C) At all times since September 25, 2012, based on Section 9(a) of the Act, the NNOC has been the exclusive collective-bargaining representative of the Greenbrier Unit.

72. (A) The following employees of Respondent Kentucky River constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the Kentucky River Unit):

All full-time and regular part-time Registered Nurses, the Team Leader and the Continuing Education Coordinator, nonprofessional employees, including the Medical Records employees, Admissions employees and Purchasing employees; and technical employees, including Certified

Respiratory Therapy Technicians, X-Ray Technicians, Licensed Practical Nurses, the DRG Coordinator, Medical Lab Technicians and the Physical Therapy Assistant employed by Respondent Kentucky River at its 540 Jetts Drive, Jackson, Kentucky facility, but excluding the Registered Respiratory Therapists, Medical Technologists, Utilization Review Nurses, business office clerical employees, confidential employees and all other professional employees, guards and supervisors as defined in the Act.

(B) On about June 8, 1998, the United Steelworkers was certified as the exclusive collective-bargaining representative of the Kentucky River Unit as described above in paragraph 72(A).

(C) At all material times, Respondent Kentucky River and the United Steelworkers maintained and enforced a collective-bargaining agreement with effective dates from January 28, 2013 through January 31, 2014, covering the terms and conditions of employment of the Kentucky River Unit, including a grievance and arbitration procedure at Article 7.

(D) At all times since June 8, 1998, based on Section 9(a) of the Act, the United Steelworkers has been the exclusive collective-bargaining representative of the Kentucky River Unit.

73. (A) The following employees of Respondent Watsonville constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act (the Watsonville Unit):

All employees described in and performing work covered by “Article 1. Recognition” of the July 27, 2011 through September 30, 2013 collective-bargaining agreement between the CNA and Respondent Watsonville (the Agreement); excluding all other employees, guards, and supervisors as defined in the Act.

(B) Since at least 2005, and at all material times, Respondent Watsonville has recognized the CNA as the exclusive collective-bargaining representative of the Watsonville

Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from July 27, 2011 through September 30, 2013.

(C) At all material times since at least 2005, based on Section 9(a) of the Act, the CNA has been the exclusive collective-bargaining representative of the Watsonville Unit.

74. (A) Since on or about June 4, 2014, Respondent Affinity unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 74(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Affinity engaged in the conduct described above in paragraph 74(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with respect to this conduct and the effects of this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.

75. (A) Since on or about June 4, 2014, Respondent Barstow unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 75(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Barstow engaged in the conduct described above in paragraph 75(A) without prior notice to the CNA/NNOC, without affording the CNA/NNOC an opportunity to bargain with Respondent Barstow with respect to this conduct and the effects of this conduct, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

## Exhibit 2

76. (A) Since on or about June 4, 2014, Respondent Bluefield unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 76(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Bluefield engaged in the conduct described above in paragraph 76(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Bluefield with respect to this conduct and the effects of this conduct, and without bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.

77. (A) Since on or about June 9, 2014, Respondent Fallbrook unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 77(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Fallbrook engaged in the conduct described above in paragraph 77(A) without prior notice to the CNA/NNOC, without affording the CNA/NNOC an opportunity to bargain with Respondent Fallbrook with respect to this conduct and the effects of this conduct, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

78. (A) Since on or about June 5, 2014, Respondent Greenbrier unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.



(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 78(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Greenbrier engaged in the conduct described above in paragraph 78(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Greenbrier with respect to this conduct and the effects of this conduct, and without bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.

79. (A) Since on or about June 4, 2014, Respondent Watsonville unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 79(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Watsonville engaged in the conduct described above in paragraph 79(A) without prior notice to the CNA, without affording the CNA an opportunity to bargain with Respondent Watsonville with respect to this conduct and the effects of this conduct, and without bargaining with the CNA to an overall good-faith impasse for a successor collective bargaining agreement.

80. (A) About June 12, 2013, the NNOC requested that Respondent Affinity bargain collectively about the implementation of the Cerner Electronic Health Records System (CERNER) at the Affinity facility.

(B) About June 2013, Respondent Affinity unilaterally implemented CERNER at its Affinity facility.

## Exhibit 2

(C) About July 25, 2013, Respondent Affinity informed employees that attendance at fifty percent (50%) of the staff meetings was mandatory.

(D) About June 12, 2014, the NNOC requested that Respondent Affinity bargain collectively about the implementation of CERNER Computer Physician Order Entry System (CPOE) at its Affinity facility.

(E) About July 26, 2014, Respondent Affinity unilaterally implemented CPOE at its Affinity facility.

(F) The subjects set forth above in paragraphs 80(B), (C) and (E) relate to the wages, hours, and other terms and conditions of employment of the Affinity Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondent Affinity engaged in the conduct described above in paragraphs 80(B), 80(C) and 80(E) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Affinity with respect to the effects of this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.

(H) Respondent Affinity engaged in the conduct described in paragraphs 80(B) and (E) without providing the NNOC with the necessary and relevant information requested as described below in paragraph 90, and its subparagraphs.

81. (A) In or about the first quarter of 2014, Respondent Affinity unilaterally discontinued the practice of granting merit wage increases.

(B) Since about mid to late December 2014, Respondent Affinity unilaterally changed the procedure for assigning patients to various floors at its Affinity facility, including but not limited to, the telemetry, ICU and medical surgical floors.

(C) The subjects set forth in paragraphs 81(A) and 81(B) concern employees' wages and other terms and conditions of employment, and are mandatory subjects for the purposes of collective bargaining.

(D) Respondent Affinity engaged in the conduct described above in paragraph 81(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Affinity with respect to this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective-bargaining agreement.

(E) Respondent Affinity engaged in the conduct described above in paragraph 81(B) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Affinity with respect to the effects of this conduct, and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

82. (A) Since about October 5, 2012, the NNOC and Respondent Affinity have not reached an initial collective bargaining agreement, and have not agreed upon an interim grievance procedure.

(B) On or about August 8, 2013, Respondent Affinity issued a disciplinary suspension to its employee Tracy Shay.

(C) On or about August 12, 2013, the NNOC, in writing, requested that Respondent Affinity bargain collectively about the discretionary discipline issued to its employee Shay.

(D) The terms and conditions of employment described above in paragraph 82(B) are mandatory subjects for the purposes of collective bargaining.

(E) Since on or about August 8, 2013, Respondent Affinity has refused to bargain collectively with the NNOC about the subjects set forth in paragraph 82(B).

## Exhibit 2

(F) Respondent Affinity engaged in the conduct described above in paragraph 82(B), which has an immediate impact on employees' tenure, status and/or earnings without providing the NNOC with notice and an opportunity to bargain over the discretionary action and the effects of the discretionary action.

83. (A) On or about August 23, 2013, the NNOC, in writing, requested that Respondent Affinity bargain collectively over an investigatory suspension issued to its employee Michelle Custer, as described above in paragraph 64(A).

(B) About February 12, 2015, Respondent Affinity issued a performance improvement plan to its employee Michelle Custer.

(C) About February 12, 2015, Respondent Affinity issued a second written warning/two-day suspension to its employee Michelle Custer.

(D) About March 13, 2015, Respondent Affinity terminated its employee Michelle Custer.

(E) About March 13, 2015, Respondent Affinity issued to its employee Michelle Custer, a retroactive unpaid suspension from about February 26, 2015 to about March 13, 2015.

(F) The subjects set forth above in paragraphs 64(A), 83(B), 83(C), 83(D), and 83(E) relate to wages, hours, and other terms and conditions of employment of the Affinity Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondent Affinity exercised its discretion in imposing the disciplinary actions described above in paragraphs 64(A), 83(B), 83(C), 83(D), and 83(E).

(H) Respondent Affinity engaged in the conduct described above in paragraphs 83(C), 83(D), and 83(E), which has an immediate impact on employees' tenure, status and/or earnings, without prior notice to NNOC and/or without affording NNOC an opportunity to bargain over the discretionary actions and the effects of the discretionary actions.

(I) (1) Since about August 23, 2013, Respondent Affinity failed and refused to bargain collectively with the NNOC about the discretionary subject set forth in paragraphs 64(A) and 83(B) and the effects of this conduct.

(2) Since about February 12, 2015, Respondent Affinity failed and refused to bargain collectively with the NNOC about the discretionary subject set forth in paragraph 83(B) and the effects of this conduct.

84. (A) About February 18, 2015, Respondent Affinity issued a two-day disciplinary suspension to its employee Frederick MacWithey.

(B) On or about February 25, 2015 the NNOC, in writing, requested that Respondent Affinity bargain collectively about the discretionary discipline issued to its employee MacWithey.

(C) About March 6, 2015, Respondent Affinity terminated its employee Scott Rhoades.

(D) About March 6, 2015, Respondent Affinity issued its employee Scott Rhoades, a retroactive unpaid suspension from about February 24, 2015 to March 6, 2015.

(D) The subjects set forth above in paragraphs 84(A), 84(C), and 84(D) relate to wages, hours, and other terms and conditions of employment of the Affinity Unit and are mandatory subjects for the purposes of collective bargaining.

## Exhibit 2

(E) Respondent Affinity exercised its discretion in imposing the disciplinary actions described above in paragraphs 84(A), 84(C), and 84(D).

(F) Since about March 5, 2015, Respondent Affinity failed and refused to bargain collectively with the NNOC about the discretionary subjects set forth in paragraphs 84(A), 84(C), and 84(D).

(G) Respondent Affinity engaged in the conduct described above in paragraphs 84(A), 84(C), and 84(D), which has an immediate impact on employees' tenure, status and/or earnings, without prior notice to NNOC and/or without affording NNOC an opportunity to bargain over the discretionary actions and the effects of the discretionary actions.

85. (A) About August 5, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Lisa Quick:

(1) The letter from the ambulance company regarding the incident involving employee Quick;

(2) All documents related to Respondent Affinity's investigation into the incident leading to the discipline of employee Quick;

(3) All documents related to discipline issued to employees for having attitude;

(4) All prior verbal and written warnings issued to employee Quick;

(5) All policies or procedures related to orienting new RN's;

(6) The RN Code of Conduct;

(7) The RN discipline policy;

(8) Policies and procedures related to Respondent Affinity's use of 'anecdotal notes'

(B) About August 12, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the suspension of its employee Tracy Shay:

- (1) Documents related to the decision to suspend employee Shay;
- (2) Documents related to any prior disciplinary actions against employee Shay.

(C) About August 12, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the termination of its employee Brenda Dallacheisa:

- (1) The results of the random drug screen administered to employee Dallacheisa;
- (2) Employee Dallacheisa's pre-test disclosure form;
- (3) All disciplinary actions of employees related to random drug screening;
- (4) All prior disciplinary actions against employee Dallacheisa;
- (5) Policies and/or procedures for random drug screening;
- (6) Documents showing provisions for employees' rehabilitation opportunities.

## Exhibit 2

(D) On or about August 23, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Michelle Custer:

- (1) The discipline issued to employee Custer;
- (2) All documents related to any prior disciplinary actions against employee Custer;
- (3) Any discipline issued to any RN for the failure to follow the “chain of command” rule;
- (4) The Affinity Medical Center staffing plan.

(E) On or about September 6, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Bridget Borojevich:

- (1) All documents related to the decision to discipline employee Borojevich;
- (2) All documents related to any prior disciplinary actions against employee Borojevich;
- (3) Documents relied on to approve employee Borojevich’s transfer to the emergency department;
- (4) All documents related to employee Borojevich’s transition to care, including orientation materials, the preceptor program, the mentorship program;
- (5) All guidance documents, policies or procedures as recommended by the Board of Nursing outlining the transition of newly graduated RNs to care programs;



(6) CHS Community Cares Policy, harassment/disruptive behavior policy.

(F) Since about October 14, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Mary Beth Steed:

- (1) The discipline issued to employee Steed;
- (2) Documents related to prior disciplinary actions against employee Steed;
- (3) Employee Steed's 90 day evaluation;
- (4) The Affinity Medical Center staffing plan and ICU staffing plan;
- (5) The ICU assignment sheets for any dates related to employee Steed's discipline, including the names of ancillary staff working in the ICU on the date of the incident;
- (6) Documents related to Respondent Affinity's investigation leading up to employee Steed's discipline;
- (7) The report from the telemetry monitoring system for employee Steed's patient on the date of the incident that lead to the discipline and the quality testing reports performed on the telemetry monitoring system.

(G) The information requested by the NNOC, as described above in paragraphs 85(A) through 85(F), and their subparagraphs, is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective bargaining representative of the Affinity Unit.

## Exhibit 2

(H) Since about August 5, 2013, Respondent Affinity has failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 85(A).

(I) Since about August 12, 2013, Respondent Affinity failed and refused to furnish the NNOC with the requested information described above in paragraphs 85(B) and 85(C)

(J) Since August 23, 2013, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraphs 85(D).

(K) Since about September 6, 2013, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 85(E).

(L) Since about October 14, 2013, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 85(F).

86. (A) Since about May 28, 2014, the NNOC, by letter, attached as Exhibit A, requested that Respondent Affinity furnish the NNOC with relevant information regarding merit wage increases.

(B) The information requested by the NNOC, as described above in paragraph 86(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about May 28, 2014, Respondent Affinity failed and refused to furnish the information requested, as described in paragraph 86(A), in Exhibit A at paragraph 10 regarding Respondent CHSI's and/or Respondent CHSPSC's approval process to determine which employees, groups, or facilities were entitled to a wage increase.

## Exhibit 2

(D) From about May 28, 2014 to about August 19, 2014, Respondent Affinity unreasonably delayed in furnishing the NNOC with the requested information as set forth in paragraph 86(A), in Exhibit A at paragraphs 1, 2, 3 and 11.

(E) From about May 28, 2014 to about August 28, 2014, Respondent Affinity unreasonably delayed in furnishing the NNOC with the following requested information as set forth in paragraph 86(A):

(1) The 2011-2013 documentation showing the aggregate amount of wage increases for registered nurses as requested in paragraph 6 of Exhibit A;

(2) The information requested in paragraphs 8 and 9 of Exhibit A;

(3) Information pertaining to Respondent Affinity's approval process regarding the decision whether an individual, group, or facility is entitled to a wage increase as set forth in paragraph 10 of Exhibit A.

(F) From about May 28, 2014 to about August 28, 2014, Respondent Affinity failed to inform the NNOC that the information described above in paragraph 86(A), specifically at paragraphs 5 and 7 of Exhibit A does not exist.

(G) From about May 28, 2014 to about October 3, 2014, Respondent Affinity failed to inform the NNOC that the information described above in paragraph 86(A), specifically at paragraph 4 of Exhibit A does not exist.

87. (A) Since about June 19, 2014, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Brenda Haught:

(1) Employee Haught's employment file;

## Exhibit 2

- (2) The discipline issued to employee Haught;
  - (3) Documents reflecting the Respondent Affinity's investigation into the incident leading to employee Haught's suspension;
  - (4) The ICU staffing grid and assignment sheet for June 18, 2014;
  - (5) Documents reflecting policies and procedures for providing care on suicide precautions;
  - (6) The name of the person who was available to provide 1:1 care while nurses carried out necessary duties, such as telephone calls with physicians, obtaining supplies and medications;
  - (7) Documents reflecting the plan in place to ensure RN's providing care for patients are relieved for breaks and lunch;
  - (8) Documentation showing the breaks and meals taken by nurses in the ICU on June 18, 2014, and proof of payment for time worked to nurses who did not receive a meal break, free from patient care responsibilities.
  - (9) Documentation showing the RN's who accepted assignments to provide break relief, as well as verification that nurses who provided break relief did not exceed safe patient limits.
  - (10) Documents that reflect management goals or guidelines for sending nurses home during "flex down staffing"
- (B) The information requested by the NNOC, as described above in paragraphs 87(A)(1) through 87(A)(10) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

## Exhibit 2

(C) From about June 19, 2014 to about September 3, 2014, Respondent Affinity unreasonably delayed in furnishing the NNOC with the information as described above in paragraphs 87(A)(1) and 87(A)(5).

(D) Since about June 19, 2014, Respondent Affinity failed and refused to furnish the NNOC with the information as described above in paragraphs 87(A)(2), 87(A)(3), 87(A)(4), 87(A)(6), 87(A)(7), 87(A)(8), 87(A)(9) and 87(A)(10).

88. (A) Since about June 10, 2014, the NNOC requested, in writing, that Respondent Affinity furnish it with any relevant medical records, paper or electronic, including audit trails and meta data, used to make a decision to issue discipline to its employee Barbara Rowe.

(B) The information requested by the NNOC as described above in paragraph 88(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about June 10, 2014, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 88(A).

89. (A) Since about June 27, 2014, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information:

- (1) Medical records reviewed with employee Barbara Rowe;
- (2) Just in time communications regarding CERNER updates;
- (3) Documents chronicling help tickets or complaints;
- (4) Documents reflecting RN notification of wrong patient coming up erroneously in the Cerner system;

(5) Educational materials provided to RN's and the date of the class on care planning in the Cerner system.

(B) The information requested by the NNOC, as described above in paragraph 89(A)(1) through 89(A)(5) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about June 27, 2014, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraphs 89(A)(1) through 89(A)(5).

90. (A) Since about June 12, 2014, the NNOC requested, in writing, that Respondent Affinity furnish it with the information as set forth in Exhibit B.

(B) Since about June 23, 2014, NNOC requested, in writing, that Respondent Affinity furnish it with the information as set forth in Exhibit C.

(C) On or about July 21, 2014, the NNOC, in writing, repeated its information requests as described above in paragraphs 90(A) and 90(B).

(D) Since on or about July 21, 2014, the NNOC, in writing, requested that Respondent Affinity furnish it with the information as set forth in Exhibit D.

(E) The information requested by the NNOC, as described above in paragraphs 90(A), 90(B), and 90(D) is necessary for and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(F) Since about June 12, 2014, Respondent Affinity failed and refused to furnish the NNOC with the following information requested by it as described above in paragraph 90(A):

## Exhibit 2

(1) The information requested in Exhibit B, paragraphs 2, 3, 5, 6, 7, 13, 16, 17, 18, 19, 21, 22, and 23;

(2) The names of the individuals responsible for health information technology at Affinity Medical Center as set forth in Exhibit B, paragraph 1;

(3) The written plans or policies for making changes to the Cerner Systems at the Affinity facility and CHS Region, as set forth in Exhibit B, paragraph 4;

(4) The name of the individual responsible for overseeing the pre-flight testing of CPOE as requested in Exhibit B, paragraph 14.

(G) Since about June 23, 2014, Respondent has failed and refused to furnish the NNOC with the following information requested by it as described above in paragraph 90(B):

(1) The information requested in Exhibit C, paragraphs 1, 4, 5, 6, 7, 10, 12, 13, 15, 18, 19, 22, 26, 32, 35 and 36;

(2) The specific nursing departments that decided the training needs were either greater than or less than the two training days recommended by CERNER as requested in Exhibit C, paragraph 21.

(H) Since about July 21, 2014, Respondent Affinity failed and refused to furnish the NNOC with the following information requested by it as described above in paragraph 90(D):

(1) The information requested in paragraph 10 of Exhibit D, referencing the June 12 information request, addressing CPOE training for registered nurses.

## Exhibit 2

(2) The information requested in paragraph 24 of Exhibit D referencing the June 12 information request, addressing the event reporting system, including an overview of the system and the individuals involved in supervising or administering the system.

(3) The documents shared with CAST team members as part of CAST team minutes, including documents related to the standing agenda item 4.0 “Change List Summary” and item 7.0 “Protocols and Procedures,” as requested in paragraph 11 of Exhibit D, referencing the June 23, 2014 information request.

(4) Information pertaining to selection of “Super Users,” as requested in paragraph 16 of Exhibit D, referencing the June 23, 2014 information request.

(5) The sign-in sheets for each registered nurse for CERNER training sessions, as requested in paragraph 20 of Exhibit D, referencing the June 23, 2014 information request.

(6) Information pertaining to additional CERNER training, as requested in paragraph 21 of Exhibit D, referencing the June 23, 2014 information request.

(7) Reports and/or other documentation from the “Event Reporting System” showing adverse events related to the implementation of the electronic health record system, as requested in paragraph 27 of Exhibit D, referencing the June 23, 2014 information request.

(8) The information requested in paragraph 32(a) through 32(j) of Exhibit D, referencing the June 23, 2014 information request, specifically requesting documents and responses to explain the CPOE Flow Chart, Clinical Systems Change Management Process.



(9) Documents related to performance issues of employee Jan Volk related to CERNER, as requested in paragraph 34 of Exhibit D, referencing the June 23, 2014 information request.

91. (A) Since about August 20, 2014, the NNOC, in writing, requested that Respondent Affinity provide all notices and/or other communication from Respondent CHSI and/or Respondent CHSPSC approving the budget.

(B) The information requested by the NNOC, as described above in paragraph 91(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about August 20, 2014, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 91(A).

92. (A) Since about January 16, 2015, and again on January 21, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information related to the investigatory suspension issued to its employee Michelle Custer:

(1) Anticipated duration of the investigation into employee Custer's conduct;

(2) All documents related to the Custer investigation;

(3) Patient records related to the incident under investigation;

(B) Since about February 5, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information related to an investigatory suspension issued to its employee Custer:

(1) The daily assignment sheet for floor 2200 for the period from December 19, 2015 through January 19, 2015[sic];

## Exhibit 2

(2) The complete medical records, including the audit trail for patients involved in the investigation for the period from 24 hours before and 24 hours after care was administered by employee Custer;

(3) A complete report of all pain documentation for all nurses in medical/surgical areas of the hospital (2100/2200/ortho) from December 19, 2015 through January 19, 2015[sic];

(4) All Medication Administration Events from December 19, 2015 through January 19, 2015[sic].

(C) Since about February 25, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information related to an investigatory suspension issued to its employee Scott Rhoades:

(1) All medical records for the time period from 24 hours before and 24 hours after the care administered by employee Rhoades that was the subject of the investigation;

(2) A complete report of all Medication Administration Events for the period from September 1, 2014 to February 27, 2015;

(D) Since about April 22, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information related to its employee Richele Angstadt:

(1) Logs maintained to report time variances for floor 2200 for the preceding 13 months;

(2) All records reflecting employee Angstadt's absences;

(3) Complete time records, including Kronos reports, occurrence logs or any record maintained in paper or electronic formats reflecting absences and tardies of all RNs who work on floor 2200 for the preceding 13 months;

(4) Documents showing the number of hours exceeding 24 that Richele Angstadt worked by week for the past 90 days.

(E) The information requested by the NNOC, as described above in paragraphs 92(A) through 92(D), and their subparagraphs, is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(F) Since about January 21, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 92(A).

(G) Since about February 5, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 92 (B).

(H) Since about February 27, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 92(C).

(I) Since about April 22, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 92(D).

93. (A) Since about May 23, 2013, Respondent Barstow by Human Resources Representative Gwen [surname unknown], in the human resources office at the Barstow facility, bypassed the CNA/NNOC and dealt directly with its employees in the Barstow Unit by soliciting employees to enter into agreements regarding the reimbursement of training expenses.

(B) The subject set forth above in paragraph 93(A) relates to the wages, hours, and other terms and conditions of employment of the Barstow Unit and is a mandatory subject for the purposes of collective bargaining.

94. (A) About June 2013, Respondent Barstow reduced the staffing levels of non-bargaining unit technicians in the emergency department.

(B) As a result of Respondent Barstow's conduct described above in paragraph 94(A), the workloads and responsibilities of bargaining unit employees increased.

(C) About February or March 2015, the exact date being unknown, Respondent Barstow implemented a new rule requiring employees in the Intensive Care Unit to perform additional electronic charting of patient head-to-toe assessments every four hours per patient.

(D) About April 2015, Respondent Barstow discontinued the practice of granting annual wage increases to employees.

(E) About mid-August 2015, Respondent Barstow implemented and/or made changes to a program which gives existing employees monetary bonuses for referring new qualified employees for employment at the Barstow facility.

(F) The subjects set forth above in paragraphs 94(A), 94(B), 94(C), 94(D), and 94(E) relate to wages, hours, and other terms and conditions of employment of the Barstow Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondent Barstow engaged in the conduct described above in paragraphs 94(A) and 94(B) without prior notice to the CNA/NNOC, without affording the CNA/NNOC an opportunity to bargain with Respondent Barstow with respect to the effects of

this conduct, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

(H) Respondent Barstow engaged in the conduct described above in paragraph 94(C) without prior notice to the CNA/NNOC, without bargaining with the CNA/NNOC over this conduct and/or the effects of this conduct, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

(I) Respondent Barstow engaged in the conduct described above in paragraph 94(D) and 94(E) without prior notice to the CNA/NNOC with respect to this conduct, without bargaining with the CNA/NNOC, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

95. (A) Since about July 2013, the CNA/NNOC and Respondent Barstow have not reached an initial collective bargaining agreement, and have not agreed upon an interim grievance procedure.

(B) About January 12, 2015, Respondent Barstow discharged its employee Katherine Painter.

(C) Respondent Barstow exercised its discretion in imposing the discharge described above in paragraph 95(B).

(D) The subject set forth above in paragraph 95(B) relates to wages, hours, and other terms and conditions for employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

(E) Respondent Barstow engaged in the conduct described above in paragraphs 95(B) and 95(C), which has an immediate impact on employees' tenure, status and/or

earnings, without prior notice to the CNA/NNOC and without affording the CNA/NNOC an opportunity to bargain over the discretionary actions and the effects of the discretionary actions.

96. (A) Since about June 25, 2013 and at all material times, the CNA/NNOC, by Steve Matthews, in an email attached as Exhibit E, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(B) (1) Since about August 16, 2013, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit F, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(2) On or about November 12, 2013, the CNA/NNOC, by James Moy, orally, repeated the request for the information described above in paragraph 96(B)(1).

(3) On about November 27, 2013, the CNA/NNOC, by James Moy, in an email, repeated the request for the information described above in paragraph 96(B)(1).

(C) (1) Since about October 28, 2013, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit G, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(2) On about November 12, 2013, the CNA/NNOC, by James Moy, orally repeated the request for information described above in paragraph 96(C)(1).

(D) Since about December 2, 2013, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit H, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(E) Since about December 12, 2013, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit I, requested that Respondent

## Exhibit 2

Barstow furnish the CNA/NNOC with information contained in paragraphs 9(d) and 9(e) of Exhibit I.

(F) The information requested by the CNA/NNOC, as described above in paragraphs 96(A), 96(B), 96(C), 96(D), and 96(E), and their subparagraphs, is necessary for, and relevant to, the CNA/NNOC's performance of its duties as the exclusive collective-bargaining representative of the Barstow Unit.

(G) Since about June 25, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 96(A).

(H) Since about August 16, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 96(B).

(I) Since about November 12, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 96(C).

(J) Since about December 2, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 96(D).

(K) Since about December 12, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the requested information set forth in paragraphs 9(d) and (e) of Exhibit I, as described above in paragraph 96(E).

97. (A) Since about December 10, 2014, and at all material times, the CNA/NNOC, by James Moy, orally requested that Respondent Barstow furnish the CNA/NNOC with the following information:

(1) Communications to employees and training materials and timelines regarding the implementation of Transfer Core Measures in existing Electronic Health Records Systems;

(2) The policy regarding physicians refusing to put in orders into the Computerized Physician Ordering Entry system;

(3) The written policy regarding mandatory call in the Obstetrics department.

(B) Since about June 16, 2014, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit J, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(C) Since about July 24, 2014, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit K, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(D) Since about August 2, 2014, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit L, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(E) Since about November 26, 2014, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit M, requested that Respondent Barstow furnish the CNA/NNOC with certain information.



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(F) Since about January 20, 2015, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit N, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(G) Since about August 14, 2015, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit O, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(H) The information requested by the CNA/NNOC, as described above in paragraphs 97(A), and its subparagraphs, through 97(G), is necessary for, and relevant to, the CNA/NNOC's performance of its duties as the exclusive collective-bargaining representative of the Barstow Unit.

(I) Since about December 10, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraphs 97(A)(1) through 97 (A)(3).

(J) Since about June 16, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 97(B).

(K) (1) Since about July 24, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested in paragraphs 1, 3, 5, 6, 8-13, and 15-51 of Exhibit K, as described above in paragraph 97(C).

(2) Since on or about July 24, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the names of the individuals responsible for Health Information Technology at the Barstow facility as set forth in paragraph 7 of Exhibit K, as described above in paragraph 97(C).

**Exhibit 2**

(L) Since about August 2, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 97(D).

(M) Since about November 26, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 97(E).

(N) Since about January 20, 2015, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 97(F).

(O) Since about August 14, 2015, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 97(G).

98. (A) At various times from around July 2013 through August 2015, Respondent Barstow and the CNA/NNOC met for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment.

(B) During the period described above in paragraph 98(A), Respondent Barstow engaged in the following conduct: bargained with no intention of reaching an agreement, insisted upon proposals that were predictably unacceptable to the CNA/NNOC, made proposals aimed at depriving the CNA/NNOC of its representational role; displayed a repeated unwillingness to adjust differences with the CNA/NNOC; failed to cloak its representatives with the authority to enter into binding agreements; failed to schedule regular bargaining sessions with the CNA/NNOC; engaged in bargaining delay tactics; engaged in direct dealing by soliciting employees to enter into agreements regarding the reimbursement of training expenses;

unilaterally reduced the staffing levels of technicians in the emergency department without engaging in effects bargaining with the CNA/NNOC; unilaterally discontinued the practice of granting annual wage increases to employees; unilaterally implemented a new rule requiring employees in the Intensive Care Unit to perform additional electronic charting of patient head-to-toe assessments; unilaterally implemented and/or made changes to a bonus referral program; imposed a discretionary discharge on its employee Katherine Painter without giving the CNA/NNOC notice or the opportunity to bargain, and failed to furnish the CNA/NNOC with relevant and necessary information.

(C) By its overall conduct described above in paragraph 98(B), as well as in paragraphs 94, 95, 96, and 97, and their subparagraphs, Respondent Barstow has failed and refused to bargain in good faith with the CNA/NNOC as the exclusive collective bargaining representative of the Barstow Unit.

99. (A) Since about August 1, 2013, Respondent Bluefield began requiring employees in Obstetrics and the Operating Room to take mandatory time off or approved paid time off on their regularly scheduled workdays if the employees were scheduled "on-call."

(B) The subjects set forth above in paragraph 99(A) relate to wages, hours, and other terms and conditions of employment of the Bluefield Unit and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Bluefield engaged in the conduct described above in paragraph 99(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Bluefield with respect to this conduct and the effects of this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective-bargaining agreement.

(D) As a result of Respondent Bluefield's conduct described above in paragraph 99(A), Respondent Bluefield reduced the hours and pay of its employees in Obstetrics and its Operating Room.

100. (A) About September 19, 2013, by electronic transmission, and about September 25, in writing by hand delivery, the NNOC requested that Respondent Bluefield furnish the NNOC with the following information:

(1) All hospital/CHS on-call policies and procedures previous to the recent change to the call policy;

(2) All hospital/CHS on-call policies and procedures starting in or around August 2013;

(3) The personnel file for Mike Adams, including all correspondence, disciplinary actions, and evaluations;

(4) Documents and notes related to the investigation into the incidents for which Mike Adams was disciplined on July 31, 2013;

(5) All documents related to discipline issued to all employees as a result of missed absences;

(6) All hospital/CHS policies and procedures related to attendance and absences;

(7) All hospital/CHS policies and procedures related to disciplining RNs.

(B) The information requested by the NNOC, as described above in paragraph 100(A)(1) through 100(A)(7) is necessary for, and relevant to, to the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Bluefield Unit.

## Exhibit 2

(C) Since about September 19, 2013, Respondent Bluefield has failed and refused to furnish the NNOC with the information requested by it as described in paragraphs 100(A)(1) through 100(A)(7).

101. (A) About June 11, 2014, Respondent Fallbrook notified the CNA/NNOC of the anticipated closure of certain core services at the Fallbrook facility, including maternity care services.

(B) Since at least on or about June 12, 2014, the CNA/NNOC requested that Respondent Fallbrook bargain collectively about the effects of the decision to close Respondent Fallbrook's maternity care services.

(C) On or about September 3, 2014, Respondent Fallbrook closed its maternity care services unit.

(D) The subjects set forth above in paragraph 101(A), relate to the wages, hours, and other terms and conditions of employment of the Fallbrook Unit, and are mandatory subjects for the purposes of collective bargaining.

(E) Since at least on or about June 12, 2014, Respondent Fallbrook failed and refused to bargain collectively with the CNA/NNOC over the effects of the decision to close Respondent Fallbrook's maternity care services.

102. (A) About January 27, 2014, Respondent Fallbrook terminated its employee Veronica Poss.

(B) Respondent Fallbrook exercised its discretion in imposing the discipline described above in paragraph 102(A).

(C) The subjects set forth above in paragraphs 102(A) and 102(B) relate to wages, hours, and other terms and conditions of employment of the Fallbrook Unit and are mandatory subjects for the purposes of collective bargaining.

(D) Respondent engaged in the conduct described above in paragraphs 102(A) and 102(B), which has an immediate impact on employees' tenure, status and/or earnings, without prior notice to the CNA/NNOC and/or without affording the CNA/NNOC an opportunity to bargain with Respondent Fallbrook with respect to this conduct and the effects of this conduct.

103. (A) About November 2013, Respondent Greenbrier, by Tammy Lilly, at Respondent Greenbrier's facility, announced to employees that it was implementing a change in its extra call pay policy for the Intensive Care Unit (ICU).

(B) The subject set forth above in paragraph 103(A) relates to wages, hours, and other terms and conditions of employment of the Greenbrier Unit and is a mandatory subject for the purposes of collective bargaining.

(C) Respondent engaged in the conduct described above in paragraph 103(A) without prior notice to the NNOC and without affording the NNOC an opportunity to bargain with Respondent Greenbrier with respect to this conduct.

104. (A) Since about January 16, 2014, for a period of 60 days, Respondent Greenbrier implemented a change to its extra call pay policy for the Medical Surgical, Pediatric Surgical, and 2<sup>nd</sup> and 3<sup>rd</sup> floor nursing units.

(B) The subjects set forth above in paragraph 104(A) relate to the wages, hours, and other terms and conditions of employment of the Greenbrier Unit and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Greenbrier engaged in the conduct described above in paragraph 104(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Greenbrier with respect to this conduct and the effects of this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective-bargaining agreement.

105. (A) On May 20, 2013, Respondent Greenbrier issued a warning to its employee Kelly Morgan.

(B) About August 16, 2013, in writing by hand delivery, and about August 21, 2013, September 5, 2013, and December 2, 2013, by electronic transmission, the NNOC requested that Respondent Greenbrier bargain collectively about the discretionary discipline issued to employee Morgan on May 20, 2013.

(C) The subject set forth above in paragraph 105(A) relates to the wages, hours, and other terms and conditions of employment of the Greenbrier Unit and is a mandatory subject for the purposes of collective bargaining.

(D) Since about August 16, 2013, Respondent Greenbrier has failed and refused to bargain collectively about the subject set forth above in paragraph 105(A).

(E) Respondent Greenbrier engaged in the conduct described above in paragraph 105(A) and imposed discretionary discipline on employee Morgan that does not have an immediate impact on employees' tenure, status, or earnings, without providing the Union with notice and an opportunity to bargain over this discretionary action and the effects of this discretionary action.

106. (A) About August 16, 2013, in writing by hand delivery, and about August 21, 2013, September 5, 2013, and December 2, 2013, by electronic transmission, the NNOC requested that Respondent Greenbrier furnish the NNOC with the following information:

- (1) Employee Kelly Morgan's personnel file;
- (2) Notes and information related to the incident causing employee Morgan's discipline;
- (3) All documents related to employees disciplined for similar reasons;
- (4) All hospital policies/procedures related to the care and monitoring of patients at risk for suicide in place prior to employee Morgan's discipline;
- (5) Documentation regarding staffing policies for patients on suicide risk.

(B) The information requested by the NNOC, as described above in paragraphs 106(A)(1) through 106(A)(5), is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Greenbrier Unit.

(C) Since about August 16, 2013, Respondent Greenbrier failed and refused to furnish the NNOC with the information requested by it as described above in paragraphs 106(A)(1) through 106(A)(5).

107. (A) Since about April 6, 2014, Respondent Kentucky River unilaterally failed to provide the Kentucky River Unit employees with a 2.5 percent wage increase in April 2014.



(B) The subjects set forth above in paragraph 107(A) relate to wages, hours, and other terms and conditions of employment of the Kentucky River Unit and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Kentucky River engaged in the conduct described above in paragraph 107(A) without providing the United Steelworkers with prior notice or the opportunity to bargain and without first bargaining to an overall good-faith impasse for a successor collective-bargaining agreement.

108. (A) About March 18, 2013, Respondent Kentucky River failed to continue in effect all the terms and conditions of the agreement described above in paragraph 72(C) by failing and refusing to accept or process all grievances that the United Steelworkers and/or Kentucky River Unit employees filed and/or attempted to file.

(B) The terms and conditions of employment described above in paragraph 108(A) are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Kentucky River engaged in the conduct described above in paragraph 108(A) without the United Steelworkers' consent.

109. (A) At various times from about December 13, 2013 through June 23, 2014, Respondent Kentucky River and the United Steelworkers met for the purposes of negotiating a successor collective-bargaining agreement to the agreement described above in paragraph 72(C).

(B) During the period described above in paragraph 109(A), Respondent Kentucky River engaged in regressive bargaining regarding its proposals for the duration of the collective-bargaining agreement, specifically by proposing an 8-month contract.

**Exhibit 2**

110. (A) Since about March 26, 2013, the United Steelworkers requested in writing that Respondent Kentucky River furnish it with the specific reasoning for each change made to the February 7, 2013 seniority list originally posted after ratification of the agreement.

(B) The information requested by the United Steelworkers, as described above in paragraph 110(A) is necessary for, and relevant to, the United Steelworkers' performance of its duties as the exclusive collective-bargaining representative of the Kentucky River Unit.

(C) Since about April 13, 2013, Respondent Kentucky River, through Naomi Mitchell, in writing, failed and refused to furnish the United Steelworkers with the information requested by it as described above in paragraph 110(A).

111. (A) Since about July 25, 2014, the United Steelworkers requested in writing that Respondent Kentucky River furnish it with all information related to the possible sale of Kentucky River Medical Center to ARH or any other entity.

(B) The information requested by the United Steelworkers, as described above in paragraph 111(A) is necessary for, and relevant to, the United Steelworkers' performance of its duties as the exclusive collective-bargaining representative of the Kentucky River Unit.

(C) Since about August 20, 2014, Respondent Kentucky River failed and refused to furnish the United Steelworkers with the information requested by it as described above in paragraph 111(A).

112. (A) On about December 6, 2013, the CNA requested in writing that Respondent Watsonville furnish it with information regarding Respondent Watsonville's asserted obligations to a temporary staffing agency (the Staffing Information Request). A true and correct copy of the request for the Staffing Information Request is attached as Exhibit P.

(B) The Staffing Information Request at Paragraphs 1 through 5, 7, and 9(d) through 9(f) as set forth in Exhibit P seeks information that is necessary for, and relevant to, the CNA's performance of its duties as the exclusive collective-bargaining representative of the Watsonville Unit.

(C) Since about December 17, 2013, Respondent Watsonville failed and refused to furnish and/or timely furnish CNA with the Information.

(D) Since about December 17, 2013, Respondent Watsonville failed and refused to offer or bargain over any accommodation in lieu of furnishing the information to CNA, to the extent that it had raised any confidentiality concerns with respect to the information.

113. By the conduct described above in paragraphs 36 through 66, and their subparagraphs, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

114. By the conduct described in paragraphs 64, 65, and 66, and their subparagraphs, Respondent has been discriminating in regard to the hire, tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

115. By the conduct described above in paragraphs 74 through 112, and their subparagraphs, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Sections 8(a)(1) and (5) of the Act.

116. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

In view of the extensive history of repeated unfair labor practice violations found by the Board and courts to have been engaged in by Respondent CHSI, Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier and Respondent Kentucky River, and as a single integrated enterprise and/or joint employers, together with the similarity of the prior violations to the unfair labor practices alleged above in paragraphs 36-66 and 74-116, the General Counsel seeks an Order requiring Respondent CHS, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Kentucky River and Respondent Watsonville to: (1) post in all its facilities any Notice to Employees that may issue in this proceeding; (2) electronically post the Notice to Employees for employees at all its facilities if the Respondents customarily use electronic means such as an electronic bulletin board, e-mail, website, or intranet to communicate with those employees; and (3) send a copy of any Board Order and Notice to Employees to all its supervisors at its Affinity, Barstow, Bluefield, Fallbrook, Greenbrier, Kentucky River and Watsonville facilities.

The General Counsel also seeks a broad remedial order applicable to Respondent CHSI, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Kentucky River and Respondent Watsonville, on a corporate-wide basis, in any and all locations where they are an employer within the meaning of Section 2(2) of the Act, as part of a single integrated enterprise, as joint employers, or otherwise, to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act in the manner alleged, or in any other manner, together with any and all relief as may be just and proper to remedy the unfair labor practices alleged.

**AFFINITY:**

As part of the remedy for the unfair labor practices alleged above in paragraphs 36-39, 53, 54, 64, 74, 80-92, and 113-116, and their subparagraphs, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondents' chief negotiator in collective bargaining read the notice to employees in English on worktime in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondents promptly have a Board agent read the notice to employees during worktime in the presence of Respondent Affinity's supervisors and agents identified above in paragraph 27. The General Counsel also seeks an order requiring the Respondents to mail the notice to all current employees, as well as all individuals employed by Respondent Affinity since October 2012.

As part of the remedy for Respondent Affinity's unfair labor practices alleged above in paragraphs 83, 84, and 113-116, and their subparagraphs, the General Counsel seeks an order requiring Respondent Affinity to make Unit employees Michelle Custer and Scott Rhoades whole for any losses incurred as a result of Respondent Affinity's unfair labor practices, including reinstatement with backpay and rescinding their discharges.

As part of the remedy for Respondents' unfair labor practices alleged above in paragraph 83, 84, and 113-116, and their subparagraphs, the General Counsel seeks an order requiring that the Respondent reimburse Unit employees Michelle Custer and Scott Rhoades for all search-for-work and work-related expenses regardless of whether the employees received interim earnings in excess of these expenses, or at all, during any given quarter or during the overall backpay period.

**BARSTOW:**

As part of the remedy for the unfair labor practices alleged above in paragraphs 36, 40, 41, 55, 75, 93-98, and 113-116, and their subparagraphs, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent Barstow's chief negotiator in collective bargaining read the notice to employees in English on worktime in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondents promptly have a Board agent read the notice to employees during worktime in the presence of Respondent Barstow's supervisors and agents identified above in paragraphs 28 and 29. The General Counsel also seeks an order requiring the Respondents to mail the notice to all current employees, as well as all individuals employed by Respondent Barstow since June 2012.

As part of the remedy for the unfair labor practices alleged above in paragraphs 93 – 98, 115-116, and their subparagraphs, the General Counsel seeks an Order requiring Respondents to reimburse the CNA/NNOC for its costs and expenses incurred in collective bargaining for all negotiations during the relevant Section 10(b) period, including, for example, reasonable salaries, travel expenses, and per diems.

As part of the remedy for Respondent Barstow's unfair labor practices alleged above in paragraphs 95(B), and 115-116, and their subparagraphs, the General Counsel seeks an order requiring Respondent Barstow to make Unit employee Katherine Painter whole for any losses incurred as a result of Respondent Barstow's unfair labor practices, including reinstatement with backpay and rescinding their discharges.

As part of the remedy for Respondent Barstow's unfair labor practices alleged above in paragraphs 95(B), and 115-116, and their subparagraphs, the General Counsel seeks an order requiring that the Respondent reimburse Unit employee Katherine Painter for all search-for-work and work-related expenses regardless of whether the employee received interim earnings in excess of these expenses, or at all, during any given quarter or during the overall backpay period.

**FALLBROOK:**

The General Counsel seeks an order requiring the Respondents to mail the notice to all of Respondent Fallbrook's employees as of the date it ceased operations on or about December 31, 2014, as well as all individuals employed by Respondent Fallbrook since May 2012.

As part of the remedy for the unfair labor practices alleged above in paragraphs 101, and 115-116, and their subparagraphs, the General Counsel seeks an order requiring that Respondent Fallbrook make whole the employees in the Fallbrook Unit in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

As part of the remedy for Respondent Fallbrook's unfair labor practices alleged above in paragraphs 102, and 115-116, and their subparagraphs, the General Counsel seeks an order requiring Respondent Fallbrook to make Unit employee Veronica Poss whole for any losses incurred as a result of Respondent Fallbrook's unfair labor practices, including reinstatement with backpay and rescinding her discharge.

As part of the remedy for Respondents' unfair labor practices alleged above in paragraph 102, and 115-116, and its subparagraphs, the General Counsel seeks an order requiring that the Respondents reimburse Veronica Poss for all search-for-work and work-related expenses regardless of whether Veronica Poss received interim earnings in excess of these expenses, or at

all, during any given quarter or during the overall backpay period. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

**ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before November 2, 2015, or postmarked on or before October 31, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by



traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on the 15<sup>th</sup> day of December, at 10:00 a.m., in a hearing room of the National Labor Relations Board, 1695 AJC Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Cleveland, Ohio this 19<sup>th</sup> day of October 2015.

/s/ Allen Binstock

---

ALLEN BINSTOCK  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 8  
1695 AJC FEDERAL OFFICE BLDG  
1240 EAST NINTH ST  
CLEVELAND, OH 44199

Attachments

Form NLRB-4338

(2-90)

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Cases 08-CA-117890, et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

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FRANKLIN, TN 37067

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CENTER AND ITS SINGLE AND/OR JOINT EMPLOYER COMMUNITY HEALTH  
SYSTEMS, INC., AND/OR ITS SINGLE AND/OR JOINT EMPLOYER CHSPSC, LLC  
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## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link:

[www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

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### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not



submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### **III. AFTER THE HEARING**

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.



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May 28, 2014

Mr. Don Carmody  
Outside Counsel, Community Health Systems  
P.O. Box 3310  
Brentwood, TN 37024-3310

Mr. Ron Bierman  
Chief Executive Officer  
Affinity Medical Center  
875 8<sup>th</sup> St NE  
Massillon, OH 44646

**Re: Annual Wage Increases at Affinity Medical Center**

Dear Mr. Carmody and Mr. Bierman:

We are writing on behalf of the approximately 250 registered nurses represented by the National Nurses Organizing Committee (NNOC) at Affinity Medical Center in Massillon, Ohio.

In years past, including last spring, Affinity Medical Center provided a general wage increase to Affinity employees, including registered nurses. This year, however, the Employer has provided no notice that it intends to provide wage increases. To the contrary, several managers have told registered nurses represented by NNOC that there won't be wage increases "because the union won't let us." As you know, such statements are both untrue and unlawful.

This letter will serve as the Union's formal demand that Affinity Medical Center provide this spring, 2014, wage increases consistent with how the Employer has provided wage increases to registered nurses in the past, including make such increases retroactive if necessary to conform to past increases.

Toward that end, the Union requests the following information:

1. The date that the Employer intends to provide wage increases prospectively, and the date the wage increases were to take effect retroactively.
2. The total aggregate amount of the wage increase for the NNOC-represented nurses.
3. The across-the-board amount of the wage increase for the NNOC-represented nurses.

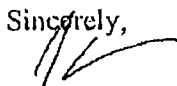
**Exhibit 2**

4. Documents, including meeting meetings, meeting agendas, and emails, including those among representatives of Affinity Medical Center and CHS corporate representatives in which the amount of wage increases was discussed and whether or not wage increases should be provided to NNOC-represented registered nurses.
5. Any CHS or Affinity Medical Center policy that sets forth the criteria that determines whether or not a facility is to provide wage increases.
6. The total aggregate amount of wage increases for registered nurses at Affinity in 2011, 2012, and 2013.
7. The across-the-board amount of wage increases for registered nurses at Affinity in 2011, 2012, 2013.
8. If the wage increases are based on performance evaluations, the percentage of registered nurses who had performance evaluations that would warrant a "merit" increase, based on the Employer's policy. This information should be provided for 2014, as well as for 2011, 2012, and 2013.
9. The criteria used to determine whether an employee's performance warrants a "merit" increase.
10. The approval process, including approval between Affinity Medical Center and CHS corporate, regarding the decision whether an individual, group, or facility is entitled to a wage increase.
11. The classifications of any Affinity Medical Center employees, including executives and/or managers who have received a wage increase from January 1, 2014 to the present.

It is also important to note that the Employer's compliance with its legal requirement to provide wage increases does not preclude the Union from making proposals regarding additional wage increases during the parties' contract negotiations.

We are next scheduled to meet with the Employer's bargaining team on June 16<sup>th</sup> and 17<sup>th</sup>, so we request receipt of the above-identified items by the close of business, Thursday, June 12, 2014.

Sincerely,

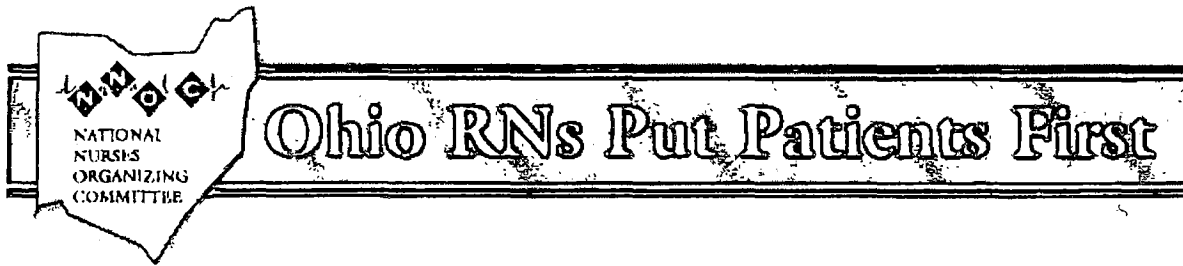
  
John Borsos  
NNOC

*Amy Pulley*  
Amy Pulley, RN  
Bargaining Team

*Pam Gardner*  
Pam Gardner, RN  
Bargaining Team

*Debbie G. McKinny*  
Debbie G. McKinny, RN  
Bargaining Team

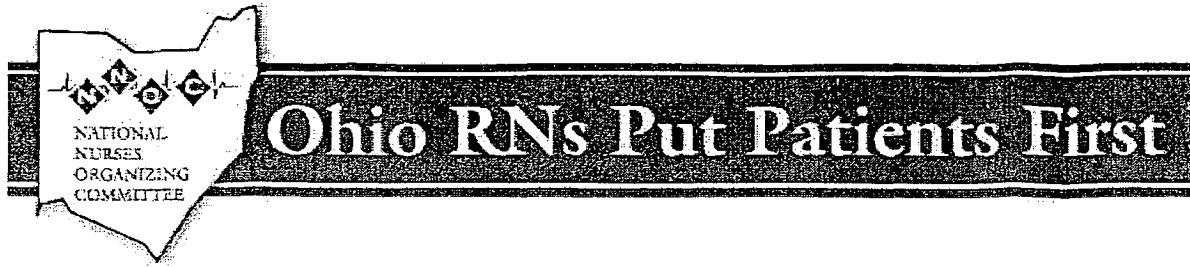
Cc: Michelle Mahon, NNOC  
NNOC FBC  
Angie Boyle  
Pam Ellis



Sincerely,

Michelle Mahon, RN  
Labor Representative NNOC

cc: John Borsos  
Bargaining Team  
Bargaining Council



June 12, 2014

Angie Boyle, SPHR  
Affinity Medical Center  
875 Eight Street Northeast  
Massillon, Ohio 44646

Dear Ms. Boyle,

It has come to the Union's attention that Affinity Medical Center intends to implement Cerner Computerized Physician Order Entry (CPOE) in the near future. NNOC hereby demands to bargain over the implementation of this system **PRIOR to implementation** as it will significantly impact the working conditions of registered nurses at Affinity.

Please provide the following information so that we may bargain over this issue:

1. Name(s) and Curriculum Vitae of people who are responsible for Health Information Technology at Affinity Medical Center
2. Name(s) of people who are responsible for the oversight of Health Information Technology for CHS in this region, including the name(s) of the Cerner representatives, and/or other advisor or consultants participating in this project.
3. A copy of the contract between CHS and Cerner for services as it relates to the Electronic Health Record and its application to Affinity Medical Center.
4. Any and all written plans or policies for making changes to the Cerner system at Affinity Medical Center, CHS Region and Cerner.
5. Any timeline which details the roll-out of the CPOE and/or additional phases of the Cerner EHR system at Affinity Medical Center.
6. The name of the persons employed by Affinity Medical Center/CHS who is responsible for decisions related to purchasing Health Information Technology.
7. Any and all educational material related to the Cerner CPOE system.
8. Date of planned implementation of CPOE system.
9. Any material which details the training component of the implementation of the CPOE system for registered nurses.
10. Schedules, including provision of relief, which spell out how the Employer proposes to train registered nurses on the CPOE system.
11. The process the hospital followed to determine the computer competencies of registered nurses.
12. The names of individuals who are accountable for oversight of safe transition to CPOE.
13. Any and all pharmacy policies and procedures related to the implementation of CPOE



14. Date of planned pre- flight testing of the CPOE system and person responsible for overseeing this testing.
15. The name of the person who is responsible for ensuring that documentation in the Cerner system is designed to facilitate nursing practice;
16. Any document that reflects an evaluation of the Cerner system ensuring that data and information meet the needs of RN duty to comply with the Ohio Nurse Practice Act
17. A copy of contracts that describe service plans, technology support or similar arrangement between Affinity Medical Center/CHS and Cerner.
18. A copy of any and all documents provided by Cerner that explain or describe the features of the various Cerner products purchased by Affinity Medical Center/CHS.
19. Any and all user guides, handbook, instruction manuals or similar document that provides use instructions for all Cerner products used at Affinity Medical Center
20. A copy of the down time plan for providing care during outages of the electronic health record.
21. Any and all documents reflecting the method for auditing patient charts
22. A list of any and all quality measures that are being collected and evaluated using the Cerner system at Affinity Medical Center.
23. A list of benchmarks of nursing care which are being evaluated through the use of the Cerner system. Please include the detail level of the information being collected (i.e. System level, Unit level, provider level).
24. A description of which method is being used to evaluate the safety of the Cerner system at Affinity Medical Center, should any exist.
25. Any document that describes the facility plan for abiding by the SAFER guidelines for electronic health records issued by the Office of the National Coordinator of Health IT.

As you know, we are scheduled for contract negotiations on June 16-17, 2014, and by agreement at our last bargaining session, the parties agreed to negotiate over issues related to those portions of the electronic health record that the Union believes the Employer implemented unlawfully and which may inhibit the nurses' ability to provide the highest quality of care.

Based on the complexities of the issues, we expect the Employer to have representatives, preferably including those from Cerner, with the technical competency to address the nurses' concerns regarding these issues.

Because the Employer has announced its intention to implement potential changes in July, time is of the essence. Accordingly, please provide the above-requested information by June 16, 2014 so that we can begin meaningful negotiations on this issue on June 17<sup>th</sup>



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*fax:* 916-446-6319

June 23, 2014

Mr. Don Carmody  
Outside Counsel, Community Health Systems  
P.O. Box 3310  
Brentwood, TN 37024-3310

***Re: Request for Information on Electronic Health Record Implementation at Affinity Medical Center***

Dear Don:

This letter will serve as a follow-up to our preliminary discussion on Monday, June 16, 2014 related to the hospital's unlawful implementation of the first phase of the Cerner electronic health record (EHR) system in June 2013. It is also a follow-up to Michelle Mahon's letter to Angie Boyle, dated June 12, 2014, regarding the Employer's announced intention to introduce its next phase, the Computerized Physician Order Entry (CPOE) in forthcoming months, a subject discussed briefly in negotiations on June 16<sup>th</sup>. In order to bargain meaningfully over the implementation of the Cerner Electronic Health Record, and in order to begin to evaluate in an effort to offer responses to the Employer's proposals of June 16 related to proposed changes to several policies concerning implementation of the Cerner Electronic Health Record system, the Union hereby requests the following information:

1. A copy of the contract between CHS and Cerner related to the Electronic Health Record system at Affinity. As we understood the Employer's explanation in bargaining on June 16, 2014, the implementation of the Cerner EHR is part of a larger agreement between CHS and Cerner, rather than an agreement negotiated between Affinity and Cerner.
2. The alternatives to Cerner considered, and the rationale why Cerner was selected.
3. The amount of money paid to Cerner to date for services related to the Electronic Health Record at Affinity.
4. The names of the Cerner representatives who provide technical support for the EHR at Affinity.
5. Copies of the timelines that set forth the implementation of the Cerner EHR for Phase 1 (approximately June 2013) and Phase 2 (approximately August 2014).
6. The role of Kimberly Naggie, the CHS Regional Clinical Informaticist as it relates to the EHR at Affinity.
7. The role of Stephanie Martin of CHS in Franklin, Tennessee, as it relates to the EHR at Affinity.



8. The names of the individuals who are part of the CAST Team meeting as described by Beth Varner at our negotiations on June 16, 2014, responsible for providing oversight of the EHR program at Affinity.
9. Minutes of CAST Team meetings from their inception to the present.
10. The names of other committees and representatives who are responsible for oversight of the Electronic Health Record at Affinity, including those that may exist at the CHS system level. This also includes the weekly meetings described by Beth Varner at our negotiations on June 16, 2014 among management representatives of CareNet, PharmNet and PathNet.
11. Minute meetings of committee meetings described in Number 8 above that relate to the implementation on ongoing oversight of the EHR at Affinity Medical Center.
12. The names of the hospitals and their representatives that are part of Hub 1 as described by Beth Varner at our negotiations on June 16, 2014, with Affinity.
13. The names of the hospitals and their representatives who participate on the CHS system-wide calls related to the Cerner implementation, as described by Beth Varner at our negotiations on June 16, 2014.
14. A copy of response sent to CMS related to Stage 1 Meaningful Use Attestation for both Medicare and Medicaid. If the Stage 1 Meaningful Use Attestation for Medicaid was submitted to the State of Ohio, we are requesting that documentation as well.
15. The names of the "Super User" registered nurses as determined by Affinity.
16. The method by which the "Super Users" were selected.
17. The additional training provided to "Super Users."
18. Minutes of the bi-weekly meetings of the "Super Users" from their inception to the present.
19. The training curriculum that was designed for nurses prior to the implementation of the EHR in June 2013.
20. The training that each individual nurses received prior to the implementation of the EHR in June 2013.
21. The nursing departments that decided the training needs were either greater than or less than the two days' training recommended by Cerner, and the justification for the difference.
22. The times, dates, and offerings that the additional "skill labs" were offered to registered related to the implementation of the first phase of Cerner at Affinity in the summer of 2013.
23. The method by which the Employer used to determine the computer literacy of each individual nurse prior to and/or following the implementation of the EHR in June 2013.
24. Documentation of the additional training provided to nurses who may float beyond their regularly-assigned unit.
25. The scheduling changes the Employer provided to allow for the training of registered nurses on the Cerner, and the ongoing requirements of additional staff time allocated for documentation as a result of the EHR.
26. The number of "tickets that have been opened" to document an error or problem with the Cerner system and a log of those tickets.
27. The method by which the Employer evaluates the adverse events that have been captured by the opening of a ticket and/or other reporting method.



28. Additional documentation which capture concerns of EHR users that were captured via a method other than the opening of a ticket.
29. A copy of the Enhancement Requests that have been submitted to Cerner/CHS.
30. A list of the Enhancement Requests that have been denied by Cerner/CHS and the reason for the denial.
31. A list of the Enhancement Request that have been accepted and the date by which the Enhancement Request has been implemented.
32. The structure of review of Enhance Requests at the facility, Hub, and system level, as well as the review process between CHS and Cerner.
33. Any changes in employee policies related to performance as a result of the implementation of the Cerner EHR.
34. The names of any registered nurses who have been counseled, placed on a performance improvement plan or disciplined or who have retired because of alleged performance issues related to usage of the Cerner EHR.
35. Copies of the training modules and training schedules proposed by the Employer related to the second phase of the Cerner system implementation, specifically the CPOE.
36. Any documentation that provides details of the changes to the Cerner EHR system as a result of the proposed second phase, specifically the CPOE.

This letter is in addition to the information requested in Michelle Mahon's letter to Angie Boyle dated June 12, 2014 (and attached herein).

It should be noted that this request for information is preliminary and is likely to be complemented when negotiations get further underway related to the EHR at Affinity.

Additionally, as we made clear in negotiations on June 16, 2014, it is the Union's position that the first phase of the Electronic Health Record was unlawfully implemented at Affinity in June 2013 and those changes required and continue to require negotiations with the Union since they involve such a fundamental part of the nurses' working conditions.

This letter will also serve to reiterate Michelle Mahon's email to Angie Boyle dated today (June 23, 2014 and attached herein) in which the Union demands that the Employer cease and desist training, mandatory or otherwise, related to the implementation of the Computerized Physician Order Entry (CPOE) that apparently has been scheduled to begin on Wednesday, June 25, 2014, until the Union has been afforded the opportunity to negotiate over the training and related issues, including the time and scheduling of the training, the relief for nurses released for training, scheduling the training to accommodate nurses work times, the content of the training, and other issues, in addition to the broader related to the proposed roll-out of the CPOE system at Affinity.

As the Union made clear when we met on June 16th, any additional changes to need to be negotiated prior to any implementation.

As you know, the Union also offered to meet June 17<sup>th</sup> and possibly other days last week to negotiate over these issues and only today you offered dates of the Employer's availability the first of which is over two week's away, July 8<sup>th</sup>

Sincerely,



John Borsos

Cc: Bargaining Team  
FBC  
Michelle Mahon  
Angie Boyle



June 12, 2014

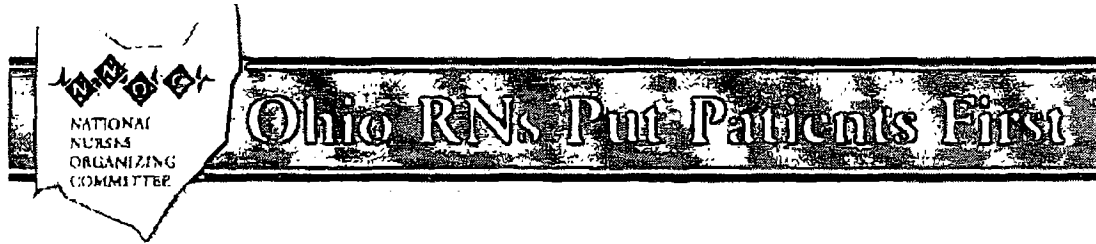
Angie Boyle, SPHR  
Affinity Medical Center  
875 Eight Street Northeast  
Massillon, Ohio 44646

Dear Ms. Boyle,

It has come to the Union's attention that Affinity Medical Center intends to implement Cerner Computerized Physician Order Entry (CPOE) in the near future. NNOC hereby demands to bargain over the implementation of this system **PRIOR to implementation** as it will significantly impact the working conditions of registered nurses at Affinity.

Please provide the following information so that we may bargain over this issue:

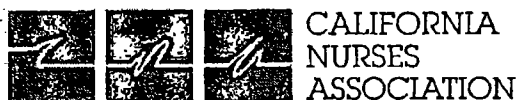
1. Name(s) and Curriculum Vitae of people who are responsible for Health Information Technology at Affinity Medical Center
2. Name(s) of people who are responsible for the oversight of Health Information Technology for CHS in this region, including the name(s) of the Cerner representatives, and/or other advisor or consultants participating in this project.
3. A copy of the contract between CHS and Cerner for services as it relates to the Electronic Health Record and its application to Affinity Medical Center.
4. Any and all written plans or policies for making changes to the Cerner system at Affinity Medical Center, CHS Region and Cerner.
5. Any timeline which details the roll-out of the CPOE and/or additional phases of the Cerner EHR system at Affinity Medical Center.
6. The name of the persons employed by Affinity Medical Center/CHS who is responsible for decisions related to purchasing Health Information Technology.
7. Any and all educational material related to the Cerner CPOE system.
8. Date of planned implementation of CPOE system.
9. Any material which details the training component of the implementation of the CPOE system for registered nurses.
10. Schedules, including provision of relief, which spell out how the Employer proposes to train registered nurses on the CPOE system.
11. The process the hospital followed to determine the computer competencies of registered nurses.
12. The names of individuals who are accountable for oversight of safe transition to CPOE.
13. Any and all pharmacy policies and procedures related to the implementation of CPOE



Sincerely,

Michelle Mahon, RN  
Labor Representative NNOC

cc: John Borsos  
Bargaining Team  
Bargaining Council



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July 21, 2014

Ms. Angie Boyle  
Vice-President of Human Resources  
Affinity Medical Center  
875 Eighth Street, NE  
Massillon, OH 44646

***Re: Response to Your Email Communication of July 10, 2014***

Dear Ms. Boyle:

On behalf of the approximately 250 registered nurses represented by the National Nurses Organizing Committee (NNOC) at Community Health System's Affinity Medical Center, this letter will serve as the response from NNOC related to the above-referenced email communication. Included in your email is Word document that is not dated, not addressed and not signed. Although it resembles the type of evasive and belligerent communications typically received from your outside counsel, since it was contained in your email we will assume it was meant to be attributed to you.

In your July 10<sup>th</sup> communication you purport to respond to a request from Michelle Mahon for information and demand to bargain dated June 12, 2014, and my follow-up request and reiteration of our demand to bargain dated June 23, 2014.

It remains the Union's contention--a position well-supported by NLRB precedent--that the implementation of an electronic health record system which the Employer (CHS and Affinity) has unlawfully begun is a mandatory subject of bargaining. It is worth noting that at no point do you assert, most likely because you are aware of the absurdity of such an assertion, that issues related to the implementation of an electronic health record are not mandatory subjects of bargaining. Once again, this letter will serve to reiterate the Union's demand to bargain over changes in working conditions for Affinity registered nurses represented by NNOC related to the Employer's implementation of the electronic health record, including but not limited to recent efforts to implement the Computerized Physician Order Entry (CPOE).

With regard to our June 16<sup>th</sup> bargaining session, it is the Union's position that the parties began negotiations over issues related to the previous, unlawful implementation of the Cerner electronic health record beginning in June 2013 and with numerous unlawful changes since then, and that we tried to begin negotiations related to the next phase of the Cerner implementation, namely the introduction of the CPOF.

Indeed, the thirteen (13) proposed policy changes that you presented on June 16<sup>th</sup>, were not limited to informing us of policy changes that the Employer had made or was intending to make. In fact, you requested our response and potential counterproposals to those proposed changes, making note that time was of the essence. Your contorted attempt to revise what occurred creates a legal conundrum for you. If, as you now assert, you were merely informing us of policy changes and are not negotiating over those changes, then you are refusing to negotiate over a mandatory subject of bargaining that the Union has repeatedly demanded to bargain over.

Nevertheless, we all know what occurred: the Employer made thirteen (13) proposals related to changes in nursing policies and procedures, several directly related to the electronic health record. In response, the Union requested information and offered to meet the next day. The Employer rejected our offer. Your latest effort attempts to ignore the record and to circumvent your legal obligations to negotiate with the Union over mandatory subjects of bargaining, but it does not change that obligation, particularly in light of the Union's repeated and insistent demand to negotiate over those changes.

Below is the Union's response to your July 10 email.

With regard to the June 12, 2014 letter from Michelle Mahon to you which makes the following requests, the Union provides the following response:

(1) **Name(s) and Curriculum Vitae of people who are responsible for Health Information Technology at Affinity Medical Center**

The Union seeks this information to determine the qualifications, background, and experience of individuals who are shaping the outlines of a program that materially affects the working conditions of Affinity registered nurses. It will also enable the Union to determine who is responsible for the ongoing oversight of the electronic health record system.

(2) **Name(s) of people who are responsible for the oversight of Health Information Technology for CHS in this region, including the name(s) of the Cerner representatives, and/or other advisors or consultants participating in this project**

The Union seeks this information to determine the qualifications, background, and experience of individuals who are shaping the outlines of a program that materially affects the working conditions of Affinity registered nurses. It will also enable the Union to determine who is responsible for one aspect of the ongoing oversight of the electronic health record system. In the limited information provided by the Employer, included but not limited to the "Clinical Systems Change Management Process" that the Employer represents relates to the Cerner electronic health record system, there appears to be a critical role in the evaluation and the approval process for a representative from CHS as well as Cerner and potentially other vendors.

- (3) **A copy of the contract between CHS and Cerner for services as it relates to the Electronic Health Record and its application to Affinity Medical Center.**

The Union seeks this information to understand the role that the local administration, the system and the vendor play in determining the working conditions of Affinity registered nurses. It is clear from the limited information provided that representatives from both Cerner and CHS play a significant role in the administration of Affinity's electronic health record system. For example, in the limited information provided by the Employer, a document represented by the Employer as the "CPOE Flow Sheet" entitled "Clinical Systems Change Management Process" Box B.5 "Within Vendor Scope" suggests certain changes that might affect the working conditions of registered nurses are specifically governed by the terms of the agreement between the Employer and its electronic health record vendors. We believe that contract would more clearly delineate those respective roles and enable the Union to make meaningful proposals related to this issue.

- (4) **Any and all written plans or policies for making changes to the Cerner system at Affinity Medical Center, CHS Region and Cerner.**

The Union believes this information, which relates to the working conditions of registered nurses, is relevant and is necessary and vital for meaningful negotiations on this issue, particularly if decisions about the working conditions of Affinity RNs are being determined by representatives other than Affinity management.

- (5) **Any timeline which details the roll-out of the CPOE and/or additional phases of the Cerner EHR system at Affinity Medical Center**

The information provided by the Employer on this issue is non-responsive--a single-page overview of a 4-hour training agenda. It's worth noting that nowhere on the document do the letters "CPOE" even appear. It is the Union's belief that documents responsive to this request exist and should be produced.

- (6) **The name of the persons employed by Affinity Medical Center/CHS who is responsible for decisions related to purchasing Health Information Technology**

The information sought in this item relates to understanding how the Employer makes decisions concerning the electronic health records and their affect on the working conditions of the registered nurses, specifically which decisions are determined at a local level, and those that are determined at a system-wide level, and who plays that role in each setting.

- (7) **Any and all educational material related to the Cerner CPOE system**

The information provided here also appears to be incomplete. For example, the IPOC document appears to 2.5 years old, and describes an "effective date of April 2010" well

before the effective date of the proposed Affinity implementation. The Union reiterates its request.

(8) **Date of planned implementation of CPOE system.**

The Employer provided a date of July 26, 2014. The Union reiterates its demand to bargain over changes in working conditions, including training, prior to implementation.

(9) **Any material which details the training component of the implementation of the CPOE system for registered nurses**

This information, as mentioned above in Item (5), is incomplete. For example, the Employer is refusing to provide the most basic information, including but limited to when training for staff will be conducted. The Union reiterates this request.

(10) **Schedules, including provision of relief, which spell out how the Employer proposes to train registered nurses on the CPOE system**

The Employer asserted there is no documentation responsive to this request and that Registered Nurses will be scheduled for training at times other than their regularly scheduled shifts and will be paid for such training schedules. The Employer should provide details that demonstrate how all registered nurses will receive training, and what accommodations will be made, for example, for nurses who have scheduled vacation and who may have conflicts to attend training beyond their regular schedules. The Union reiterates its request.

(11) **The process the hospital followed to determine the computer competencies of registered nurses.**

The Employer asserts that "Affinity did not need to make any independent determination of the 'computer competencies' of Registered Nurses. Registered Nurses routinely utilize computers in the performance of their daily work assignments." This is an area of concern for registered nurses and an issue the Union intends to negotiate over.

(12) **The names of individuals who are accountable for oversight of safe transition to CPOE**

The Employer asserts that "All Affinity staff share the responsibility for a safe transition to CPOE." In the absence of the Employer providing the names of those individuals, the Union is trying to determine those Affinity employees who play a leadership role in the accountability of this system, particularly if they serve on a committee where oversight of the CPOE is some functional component of such committee. The Union reiterates its request.



- (13) **Any and all pharmacy policies and procedures related to the implementation of CPOE**

The Employer asserts there are none.

- (14) **Date of planned pre-flight testing of the CPOE system and person responsible for overseeing this testing**

While the Employer provided a date of June 18, 2014, you refused to provide the names of those responsible for overseeing the testing. The Union reiterates its request.

- (15) **The name of the person who is responsible for ensuring that documentation in the Cerner system is designed to facilitate nursing practice.**

The Employer notified the Union the person is Bill Osterman, CNO.

- (16) **Any document that reflects an evaluation of the Cerner system ensuring that data and information meet the needs of RN duty to comply with the Ohio Nurse Practice Act**

The minutes of CAST committee provided by the Employer indicate that there has been extensive discussion related to the implementation of the electronic health record and current nurse practice policies and/or state law pertaining to nurse practice issues. These issues materially affect the working conditions of registered nurses and the Union reiterates its request for such material.

- (17) **A copy of contracts that describe service plans, technology support or similar arrangement between Affinity Medical Center/CHS and Cerner**

The information is sought to understand and make proposals related to potential changes in the proposed electronic health record system and subsequent changes going forward, issues which are material to working conditions of registered nurses. The Union reiterates its request.

- (18) **A copy of any and all documents provided by Cerner that explain or describe the features of the various Cerner products purchased by Affinity Medical Center/CHS**

The information is sought to understand and make proposals related to potential changes in the proposed electronic health record system and subsequent changes going forward, issues which are material to working conditions of registered nurses. The Union reiterates its request.

- (19) **Any and all user guides, handbook, instruction manuals or similar document that provides use instructions for all Cerner products used at Affinity Medical Center**

The information provided does not appear to include instruction manuals or similar documents. The Union reiterates its request.

- (20) **A copy of the down time plan for providing care during outages of the electronic health record**

The Union is reviewing the information provided, which may be followed by additional requests for information.

- (21) **Any and all documents reflecting the method for auditing patient charts**

The Union is reviewing the information provided, which may be followed by additional requests for information.

- (22) **A list of any and all quality measures that are being collected and evaluated using the Cerner system at Affinity Medical Center**

Your response, that the quality measures that were in place before Cerner are the same ones being used now, is incomplete and non-responsive. Please detail what those measures are, and how, if at all, the use of the Cerner electronic health record changes that.

- (23) **A list of benchmarks of nursing care which are being evaluated through the use of the Cerner system. Please include the detail level of the information being collected (i.e. System level, Unit level, provider level)**

The Union is trying to understand the measurements the Employer is using, if any, to determine whether the use of the Cerner electronic health record system has improved or reduced the quality of patient care delivered at Affinity Medical Center.

- (24) **A description of which method is being used to evaluate the safety of the Cerner system at Affinity Medical Center, should any exist**

The Employer asserts that Affinity evaluates the safety of the Cerner EHR through its "Event Reporting System." Please provide materials and further documentation that detail the Event Reporting System, including an overview of the system, the individuals involved in supervising or administering it, and any reports or material that the Employer has produced since January 1, 2013, through the Event Reporting System related to the electronic health record..

- (25) **Any document that describes the facility plan for abiding by the SAFER guidelines for electronic health records issued by the Office of the National Coordinator of Health IT**

The Employer responded there is no documentation responsive to this request.

With regard your response to my letter of June 23, 2014 to Don Carmody, the Union offers the following response.

- (1) **A copy of the contract between CHS and Cerner related to the Electronic Health Record system at Affinity**

We agree the request is essentially the same as that set forth in Item (3) of Michelle Mahon's June 12<sup>th</sup> request. But because the Employer has refused to provide it, we reiterate our request.

- (2) **The alternatives to Cerner considered, and the rationale why Cerner was selected**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system and may permit the Union to make proposals that would enable improvements in the working conditions of registered nurses, particularly related to features of electronic health records offered by other vendors that may be more responsive to the needs of nurses and patients and do not compromise the professional judgment of registered nurses.

- (3) **The amount of money paid to Cerner to date for services related to the Electronic Health Record at Affinity**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system and may permit the Union to make proposals that would enable improvements in the working conditions of registered nurses, particularly related to features of electronic health records offered by other vendors that may be more responsive to the needs of nurses and patients and do not compromise the professional judgment of registered nurses.

- (4) **The names of the Cerner representatives who provide technical support for the EHR at Affinity.**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system and may permit the Union to make proposals that would enable improvements in the working conditions of registered nurses, particularly suggesting changes to features of the electronic health records systems that may be more responsive to the needs of nurses and patients and do not compromise the professional judgment of registered nurses.

- (5) **Copies of the timelines that set forth the implementation of the Cerner EHR for Phase 1 (approximately June 2013) and Phase 2 (approximately August 2014)**

The information "provided" by the Employer on this issue is non-responsive. It does not address the Phase 1 implementation at all and its connection to the CPOE phase implementation, as addressed in our response to the June 12<sup>th</sup> request, Item (5) is also inadequate. The Union reiterates its request.

- (6) **The role of Kimberly Naggie, the CHS Regional Clinical Informaticist as it relates to the EHR at Affinity**

Considering that a representative of CHS participates in Affinity's CAST committee and the overall role that CHS representatives play in determining components of the Affinity electronic health record that affects Affinity registered nurses,, the role that Ms. Naggie plays in determining working conditions for Affinity registered nurses is relevant. We reiterate our request.

- (7) **The role of Stephanie Martin of CHS in Franklin, Tennessee, as it relates to the EHR at Affinity**

Considering that a representative of CHS participates in Affinity's CAST committee, the role that Ms. Martin plays in determining working conditions for Affinity registered nurses is relevant. We reiterate our request.

- (8) **The names of the individuals who are part of the CAST Team meeting as described by Beth Varner at our negotiations on June 16, 2014, responsible for providing oversight of the EHR program at Affinity**

The information provided does not set forth the full names of the Cast Team members.

- (9) **Minutes of CAST Team meetings from their inception to the present**

The minutes of the August 12, 2013 CAST team meeting were not provided. The Union requests those minutes.

- (10) **The names of other committees and representatives who are responsible for oversight of the Electronic Health Record at Affinity, including those that may exist at the CHS system level. This also includes the weekly meetings described by Beth Varner at our negotiations on June 16, 2014 among management representatives of CareNet, PharmNet and PathNet**

The Union reiterates its request.

- (11) **Minutes of committee meetings described in Number 9 above that relate to the implementation of ongoing oversight of the EHR at Affinity Medical Center**

**Exhibit 2**

See response to Item (9) above. In addition, the minutes of the CAST team suggest that there were numerous documents shared with CAST team members as part of those meetings. The Union hereby requests those materials, in particular documents related to the standing agenda item 4.0 "Change List Summary" and item 7.0 "Protocols and Procedures."

- (12) **The names of the hospitals and their representatives that are part of Hub 1 as described by Beth Varner at our negotiations on June 16, 2014, with Affinity**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system, since those hospitals and their representatives appear to play a role in determining the working conditions of Affinity registered nurses.

- (13) **The names of the hospitals and their representatives who participate on the CHS system-wide calls related to the Cerner implementation, as described by Beth Varner at our negotiations on June 16, 2014**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system, since those hospitals and their representatives appear to play a role in determining the working conditions of Affinity registered nurses.

- (14) **A copy of response sent to CMS related to Stage 1 Meaningful Use Attestation for both Medicare and Medicaid.**

The Employer provided this information.

- (15) **The names of "Super User" registered nurses as determined by Affinity**

The information requested was not limited to the CPOE rollout and the Employer's response that there are no SuperUsers related to the CPOE is contradicted by the Employer's response to Item (32) below, which it represents as a CPOE "Flow Chart" entitled "Clinical Systems Change Management Process" which references "Hospital SuperUsers" [Box A.2]. In bargaining on June 16<sup>th</sup>, the Employer represented that Super Users had been selected by the Employer and used during the first phase of the Cerner electronic health record implementation. The Union reiterates its request. The limited information that you provided appears to be restricted to the more recent effort regarding implementation of the CPOE and it too appears to be incomplete. With regard to soliciting "volunteers" related to CPOE, the Union reiterates its demand to bargain over this issue.

- (16) **The method by which the "Super Users" were selected.**

The Employer responded that “they volunteered.” Was there additional criteria used to determine the suitability of a “volunteer”? For example, were there any volunteers who were rejected by the Employer? In addition, please provide information related to how the volunteers were solicited (e.g, in staff meetings, approached by individual managers, etc.).

**(17) The additional training provided to “Super Users”**

Your response contradicts the information provided by Ms. Varner at our bargaining on June 16<sup>th</sup>. She stated that in the first phase of the Cerner implementation, Super Users were selected and trained. We reiterate our request, and specifically request the training material used with the Super Users.

**(18) Minutes of the bi-weekly meetings of the “Super Users” from their inception to the present**

Your response that no minutes were kept, contradicts the information provided on June 16<sup>th</sup> where the Employer suggested that minutes were kept. The Union reiterates its request.

**(19) The training curriculum that was designed for nurses prior to the implementation of the EHR in June 2013**

The Union reiterates its request.

**(20) The training that each individual nurse received prior to the implementation of the EHR in June 2013**

The Employer responded: “Training consisted of up to 16 hours of Cerner training for which nurses were paid. The training received by RNs is described in information otherwise provided in your June 23 request.” The information does not appear to be provided. The Union reiterates its requests, including but not limited to, the sign-in sheets for each registered nurse for training sessions, which would detail exactly which training each registered nurse received.

**(21) The nursing departments that decided the training needs were either greater than or less than the two days’ training recommended by Cerner, and the justification for the difference**

The Employer’s response —“Nursing departments received training based upon clinical needs of the department.”—is non-responsive. Which specific departments received additional training, and what did that training consist of? What was specifically required

in terms of additional training for that particular unit beyond the 16 hours purportedly offered to all registered nurses?

- (22) **The times, dates and offerings that the additional “skills labs” were offered to registered nurses related to the implementation of the first phase of Cerner at Affinity in the summer of 2013**

Are we to understand your response to mean that the additional “skills lab” offered to registered nurses consisted of a single skills lab on August 6, 2013?

- (23) **The method which the Employer used to determine the computer literacy of each individual nurse prior to and/or following the implementation of the EHR in June 2013**

We agree that this request is the same as Item (11) in Michelle Mahon’s June 12<sup>th</sup> letter. Our response is noted above.

- (24) **Documentation of the additional training provided to nurses who may float beyond their regularly-assigned unit**

The Employer responded that no such documentation exists, which raises substantial concerns for the Union and will be a subject for negotiations.

- (25) **The scheduling changes the Employer provided to allow for the training of registered nurses on the Cerner, and the ongoing requirements of additional staff time allocated for documentation as a result of the EHR.**

We understand the Employer’s response to mean that the Employer contends it has made no changes to the staffing for registered nurses to accommodate for the increased time the use of the electronic health record takes registered nurses away from delivering direct patient care. This raises substantial concerns for the Union and will be a subject for negotiations.

- (26) **The number of “tickets that have been opened” to document an error or problem with the Cerner system and a log of those tickets**

The minutes of the CAST meetings suggest such reviews of tickets that were opened were reviewed by the committee. The fact that the Employer can quantify how many tickets have been opened suggests there is a tracking method that can be provided. The Union reiterates its request.

- (27) **The method by which the Employer evaluates the adverse events that have been captured by the opening of a ticket and/or other reporting method.**

The Employer responds that "Affinity evaluates such adverse effects through its 'Event Reporting System'. The Union hereby requests the reports and/or other documentation as part of the "Event Reporting System" that would capture the adverse events related to the implementation of the electronic health record system, as well as its continued operation to date.

- (28) **Additional documentation which captures concerns of EHR users that were captured via a method other than the opening of a ticket**

The Employer's response that "No such documentation exists," thereby reinforces the materiality and relevancy of the Item (26) above related to the opening of tickets.

- (29) **A copy of the Enhancement Requests that have been submitted to Cerner/CHS**

The Union is in receipt of this information and upon review may request additional information.

- (30) **A list of the Enhancement Requests that been denied by Cerner/CHS and the reason for the denial**

The Union is in receipt of this information and upon review may request additional information.

- (31) **A list of the Enhancement requests that been accepted and the date by which the enhancement request has been implemented**

The Union is in receipt of this information and upon review may request additional information.

- (32) **The structure of review of Enhancement Requests at the facility, HUB, and system level as well as the review process between CHS and Cerner**

In response to this request, the Employer provided a document described as a "CPOE Flow Chart" and entitled "Clinical Systems Change Management Process." The documents warrants further explanation, which the Union is hereby requesting, including but not limited to:

- a. Who comprises the "On-Site Support Optimization Team" [Box A.2]? How often does it meet? We further requests any minutes or other documents used in the team meetings.
- b. The names, job titles and function of the "IS staff" identified in Box A.3.
- c. The names and job titles of the Clinical Liason identified in Box A.4.
- d. What is meant by "Change Request A.C." Box A.5.
- e. An explanation of "RCI" in Box A.6. If RCI is a group of people, the names, job titles and function of those individuals make RCI up.
- f. What is meant by "Corporate Request Business Partner Review" Box B.1?



- g. The names, job titles, and functions of the "Design and Change Review Board" Box B.2.
- h. An explanation regarding Box 8.0 regarding "Change Control from AIVS or Corporate Business Partner Via MyIS." What is AIVS? Who are the Corporate Business Partners? What is MyIS?
- i. Who conducts the "Corporate Request Business Partner Review" referenced in Box B. 1? What is the criteria for undertaking such a review?
- j. The names, job titles and functions of "Steering Committee" referenced in Box B.9.

**(33) Any changes in employee policies related to performance as a result of the implementation of the Cerner**

This response appears to contradict the limited information provided by the Employer, including but not limited to the minutes of the CAST team whereby Chief Nurse Officer Bill Osterman reports regularly on changes to nursing protocols and procedures. The Union hereby reiterates its request.

**(34) The names of any RNs who have been counseled, placed on a performance improvement plan or discipline or who have retired because of alleged performance issues related to usage of the Cerner**

Please provide any documentation related to the counseling, performance improvement plan or discipline of Jan Volk related to the alleged performance issues associated with the usage of Cerner.

**(35) Copies of the training modules and training schedules proposed by the Employer related to the second phase of the Cerner system implementation, specifically the CPOE**

The information "provided" by the Employer appears to be incomplete. The agenda, purporting to represent a 4-hour training session, makes no mention of CPOE. It does not include training modules, nor does it include the training schedules. We reiterate our request.

**(36) Any documentation that provides details of the changes to the Cerner EHR system as a result of the proposed second phase, specifically the CPOE**

The Employer's representation that "no such documentation exists," is absurd. The Employer is in the midst of comprehensive enhancement to its electronic health record system, with numerous committees and processes in place to oversee that enhancement making it hard to believe that "no such documentation exists." The Union reiterates its request.

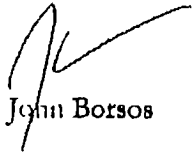
## Exhibit 2

It should be noted that after further evaluating this information and as more information is provided, the Union may supplement this request for information with additional requests for information. Furthermore, our ability to respond to and make meaningful proposals is subject to have necessary and relevant information provided in a timely way.

We expect the Employer to be prepared to discuss this information request and related issues when we meet for negotiations on Tuesday, July 22.

In the meantime, we reiterate our demand that no changes be made to the electronic health record, including the implementation of the CPOE until the Union has negotiated over those issues.

Sincerely,



John Borsos

Cc: Michelle Mahon  
NNOC Bargaining Team  
Facility Bargaining Council  
Don Carmody  
Jan Ellis

## Exhibit 2

6/25/13

Mr. Don Carmody

Chief Negotiator

Barstow Community Hospital (CHS)

Dear Mr. Carmody

By this letter, CNA/NNOC confirms that we are scheduled to meet for collective bargaining on July 10, 2013. CNA/NNOC also demands bargaining on July 12, 2013. We further demand that within two weeks, you provide us with additional dates on which you are available for bargaining.

We demand a list of all unilateral changes to terms and conditions of work of bargaining unit members, including the date the change was implemented, a description of the change, and all documents related to the change.

Further, we demand that you cease and desist from making any further unilateral changes to wages, benefits or working conditions and/or changes to policies affecting Registered Nurses at Barstow Community Hospital. We demand a copy of all HR policies, nursing policies, Employee Handbook currently in effect and the date of each policies approval or last modification and signature(s) of who approved such change.

Further, we demand that you rescind the change to RNs regarding certifications including but not limited to "Heart code" and then bargain with the union regarding all terms and conditions of employment, including certification issues.

Sincerely

Steve Matthews

Chief Negotiator

C.N.A./NNOC

## Info Requests Barstow / Fallbrook - RN List Update

James Moy

Sent: Friday, August 16, 2013 7:55 AM

To: Laura\_Elliott@chs.net; Smorzewski, Greg [Greg\_Smorzewski@chs.net]; Ellis, Jan [Jan\_Ellis@chs.net]

Cc: Stephen Matthews; Steve Matthews [sem52754@gmail.com]; Nicole Daro

---

Greg and Laura,

This is my usual monthly information request for an updated list of RNs. Please note that I have also requested date of original RN licensure as a data column. Thanks.

James Moy

August 16, 2013

Laura Elliott, Human Resources Director  
Barstow Hospital  
Barstow Community Hospital  
820 E. Mountain View Street  
Barstow, CA 92311

Sent Via Fax: 760 957 3299

Sent Via Email: [Laura\\_Elliott@chs.net](mailto:Laura_Elliott@chs.net)

Subject: Updated RN Bargaining Unit List

Dear Laura:

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1) A list of all RNs who are eligible members of the CNA/NNOC Barstow Community Hospital RN Bargaining Unit as of the date of this correspondence. We request the list include Department, Shift, Status (FT, PT benefitted, PT non-benefitted, PRN, etc.), hire date, date of original RN licensure, and contact information (email, telephone, and mailing).

This is a routine request CNA/NNOC intends to periodically submit to keep our records current. Please provide the above-requested information within two (2) weeks of the date of this letter. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or [jmoy@calnurses.org](mailto:jmoy@calnurses.org).

Sincerely,

EXHIBIT F

**Committee Labor Representative**

CC: Stephen Matthews, CNA/NNOC Negotiator  
Barstow Community Hospital RN Facility Bargaining Council  
Jan Ellis, CHS HR

August 16, 2013  
Greg Smorzewski, VP Human Resources  
Fallbrook Hospital  
524 East Elder Street  
Fallbrook, CA 92028

Sent Via Email: [Greg\\_Smorzewski@chs.net](mailto:Greg_Smorzewski@chs.net)

**Subject: RN List Update**

**Dear Greg:**

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

An updated list of all current bargaining unit RNs including department, date of original RN date of original RN licensure, shift, status (FT, PT, PD, benefitted/nonbenefitted) unit, hire date, contact info (phone, email, address), and hourly wage rate.

If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at

818 433 2119 or  
jmoy@calnurses.org.

Sincerely,  
James Moy  
California Nurses Association / National Nurses Organizing

**Committee Labor Representative**

CC: Stephen Matthews, CNA/NNOC Negotiator  
Fallbrook Hospital RN Facility Bargaining Council  
Jan.Ellis, CHS\_HR

**California Nurses Association / National Nurses United**  
**Organizer**  
225 W. Broadway, Suite 500  
Glendale, CA 91204

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818.637.7121 – Office  
818.433.2119 – Cell  
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## Info Request re: Patient Care Plan and Staffing Logs

James Moy

451 541 3615

**Sent:** Monday, October 28, 2013 7:06 PM  
**To:** Smorzewski, Greg [Greg\_Smorzewski@chs.net]; Laura\_Elliott@chs.net  
**Cc:** Ellis, Jan [Jan\_Ellis@chs.net]; Stephen Matthews; Steve Matthews [sem52754@gmail.com]  
**Attachments:** BCH Info Request Re Care ~1.docx (18 KB) ; FH Info Request Re Care P~1.docx (18 KB)

---

Laura and Gregg –

Attached please find an information request with the usual verbiage re: Patient Care Plan and Staffing Logs. If you have any questions I can be reached as usual at the below phone and email. Thanks.

James Moy

California Nurses Association / National Nurses United  
Organizer  
225 W. Broadway, Suite 500  
Glendale, CA 91204  
818.637.7121 – Office  
818.433.2119 – Cell  
818.240.8336 - Fax



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Please provide the above-requested information within two (2) weeks of the date of this letter. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline,



please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or [jmoy@calnurses.org](mailto:jmoy@calnurses.org).

Sincerely,

James Moy

California Nurses Association / National Nurses Organizing Committee  
Labor Representative

CC: Stephen Matthews, CNA/NNOC Negotiator  
Barstow Community Hospital RN Facility Bargaining Council  
Jan Ellis, CHS HR

## Exhibit 2

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**From:** James Moy  
**Sent:** Monday, December 02, 2013 8:25 AM  
**To:** 'Laura\_Elliott@chs.net'  
**Cc:** 'Sean\_Fowler@chs.net'; 'Ellis, Jan'; Stephen Matthews; Nicole Daro; Kathy Carder  
**Subject:** Information Request and Due Diligence

---

December 2, 2013

Laura Elliott, Human Resources Director

Barstow Community Hospital  
820 E. Mountain View Street  
Barstow, CA 92311

Sent Via Email: Laura\_Elliott@chs.net

Subject: Strike Staffing Plan

Dear Laura:

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information:

1. The written staffing plan for the hours of December 3, 2013, 7 AM through December 4, 2013 6:59 AM

Due to the time constraints of this matter, I request a response before close of business on Monday, December 2, 2013. If I do not receive a response within that time frame, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or [jmoy@calnurses.org](mailto:jmoy@calnurses.org).

We remind you that BCH is required by law to staff in accordance with the California Nursing Practice Act, Title 22, and that of course we will take any and all action necessary to ensure that our patients are cared for in accordance with the Act.

I have attached the offer we have previously submitted indicating that should a critically emergent situation arise at Barstow Community Hospital beginning at 6:00AM on December 3rd and running to 8:00PM on December 3rd, during the course of the one-day strike conducted by CNA at BCH, we have a Patient Protection Task Force in place.

Sincerely,

James Moy

California Nurses Association / National

Nurses Organizing Committee Labor Representative

CC: Stephen Matthews, CNA/NNOC Negotiator

Barstow Community Hospital RN Facility Bargaining Council

Sean Fowler, Barstow Community Hospital CEO

Jan Ellis, CHS HR

James Moy

California Nurses Association / National Nurses United

Organizer

225 W. Broadway, Suite 500

Glendale, CA 91204

818.637.7121 – Office

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## Information Request re: Lockout

James Moy

**Sent:** Thursday, December 12, 2013 2:06 PM  
**To:** Laura\_Elliott@chs.net  
**Cc:** Stephen Matthews; Steve Matthews [sem52754@gmail.com]; Nicole Daro; Jane Lawhon  
**Attachments:** -CNA Info Request BCH Lock~1.pdf (215 KB)

---

Dear Ms. Elliot,

Please see the attached information request, also sent by fax and certified mail. Thank you.

James Moy

California Nurses Association / National Nurses United  
Organizer  
225 W. Broadway, Suite 500  
Glendale, CA 91204  
818.637.7121 – Office  
818.433.2119 – Cell  
818.240.8336 - Fax

I have endorsed and support The Robin Hood Tax on Wall Street. Please support this campaign:  
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Join the RHT Twitter campaign at: @RobinHoodTax  
Like the Robin Hood Tax on Wall Street Facebook page at: [goo.gl/rHKDxz](https://www.facebook.com/rhkdtx)  
Endorse and Volunteer for the Robin Hood Tax on Wall street at: [goo.gl/aJBzmB](https://www.facebook.com/rhkdtx)

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2000 Franklin Street

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phone 510-273-2200

fax 510-663-2771

LOS ANGELES

225 West Broadway

Suite 500

Glendale CA 91204

phone 818-240-1900

fax 818-240-8336

VIA FACSIMILE (760 957 3048), Sent Via Email: ([Laura\\_Elliott@chs.net](mailto:Laura_Elliott@chs.net)) and Certified Mail

December 11, 2013

Laura Elliott, Human Resources Director  
Barstow Community Hospital  
820 E. Mountain View Street  
Barstow, CA 92311

RE: Information Request – Agency Contract

Dear Ms. Elliott:

This is in response to Barstow Community Hospital/ CHS' letter of December 4, 2013, advising nurses that because they, "failed to report to work" during the California Nurses Association's lawfully noticed one-day strike, which commenced at 6:00 AM on Tuesday, December 3, 2013 and concluded at 6:59 AM December 4, it has "taken the requisite measure to engage a qualified worker to temporarily replace you."

CNA notified the Employer that all RNs would be on strike via the 10-day notice to the acute care facility. Nurses had no obligation to advise Barstow Community Hospital/CHS of their intention to honor the strike, nor were they obligated to report to work during the strike period. Yet the communication issued to Nurses following the conclusion of the strike advised that a lockout was being imposed because, "you failed to report to work to perform your scheduled, assigned duties due to participation in strike related activities. "

In your letter you claim that the contract with the agency requires Barstow Community Hospital/CHS to lock nurses out, inasmuch as we must fulfill certain obligations we have to the engagement of the nurse who has replaced you temporarily, you will be expected to report to work on Friday, December 6, 2013 to resume performance of your scheduled, assigned duties." The date of return to work varies by letter. Ostensibly in reliance on this lockout period, you appear to have suspended various existing terms and conditions of RN employment, including those covering Staffing and Call Off procedures (without having obtained our prior consent or agreement, of course.)

In order to evaluate the Employer's claim that its "obligations" to temporary replacements required it to lock out RNs and unilaterally suspend important contractual guarantees, I am requesting that you provide the following information immediately:

1. A true, correct and complete copy of any contract or other agreement with the temporary replacements or staffing agencies referred to in paragraph 2 of your December 4, 2013 letter.
2. Any and all documents relating in any way to the negotiation of the agreement described in Item 1, above, including but not limited to correspondence, notes, emails, drafts, proposals, counterproposals, memoranda and any other writing between employees, agents and/or representatives of Barstow Community Hospital, Community Health System, and the temporary staffing agency with whom the agreement was made.
3. True and correct copies of any and all advertising by Barstow Community Hospital and/or Community Health System, and/or any person or entity with whom it has contracted for purposes of soliciting temporary replacement workers to cover for the strike noticed to take place on December 3, 2013 and/or the lockout which commenced on December 4, 2013.
4. Any and all documents relating to the advertising described immediately above in Item 3, including but not limited to correspondence, emails, notes, invoices and any other writing relating to the procurement or placement of said advertising.
5. Copies of any and all contracts Barstow Community Hospital and/or Community Health System has entered into at any time within the past three years with any temporary employment agency or nurse registry for the provision of Registered Nursing services at its hospital in Barstow.
6. In your letter, you claim that the temporary replacement workers are "qualified" to perform bargaining unit work. As you know, the only Registered Nurses who may provide nursing services in this state are those possessing a valid California RN license. The Union has a right to verify your representations to determine whether the Employer has improperly engaged unqualified staff to perform bargaining unit work. Therefore, for each Registered Nurse scheduled to serve as a temporary replacement for locked out/striking workers at any time during the period of December 3, 2013 through December 10, 2013, provide the following information, as it becomes available:

## Exhibit 2

- (a) Name;
  - (b) State of residence;
  - (c) State(s) which have issued Registered Nursing license to said Registered Nurse;
  - (d) A list of all nursing related certifications;
  - (e) Any and all documents reflecting past service by the individual as a temporary strike replacement worker at any location; and
  - (f) A true and correct copy of the individual's application for temporary employment during the lockout/work stoppage scheduled for December 3, 2013 through December 10, 2013, whether or not that application was directly with Barstow Community Hospital, or an agent, representative, agency or entity acting on behalf of the employer.
7. Any and all documents reflecting an investigation and/or inquiry by Community Health System/Barstow Community Hospital of any and all temporary staffing agencies with whom it has consulted for purposes of procuring strike replacements at any time during October/November/December 2013, concerning such agencies' record of placing any employee for employment with any employer in any strike and/or lockout at any location at any time in the past, including but not limited to the number of times the entity has offered to place persons in temporary employment in strike and/or lockout situations.
8. With respect to the December 4 letter, please provide the following:
- (a) The name(s) of the author(s)
  - (b) The date(s) the Hospital met to develop it
  - (c) The names of participants in those development meetings
9. To better understand the working conditions inside the Hospital during the strike and lockout, the Union requests the following:
- (a) The names of bargaining unit Nurses scheduled to work December 3, 2013, separately by each patient unit or hospital department.
  - (b) The patient census for December 3, 2013, separately by each patient unit or hospital department.
  - (c) The number of replacement RNs who worked at the hospital on December 3, 2013, separately by patient unit or hospital department.



## Exhibit 2

(d) The names of bargaining unit Nurses schedule to work December 4, 5, 6, and 7 2013, separately by each patient unit or hospital department.

(e) The patient census for December 4, 5, 6 and 7 2013, separately by each patient unit or hospital department.

(f) The number of replacement RNs who worked at the hospital on December 4, 5, 6 and/or 7 2013, separately by each patient unit or hospital department.

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Given the current Lockout status, I would very much appreciate you arranging to provide the above-requested information by Friday, December 13, 2013. If, for any reason, all of the information cannot be produced by then, please produce all information that is readily available and advice when the remaining information will be produced and the reason(s) for the delay.

Respectfully,

---

Stephen Matthews, CNA/NNU

Labor Representative

CC: Fernando Losada, Northern CA Collective Bargaining Director

Damian Tryon, CNA/NNU Labor Representative

Barstow Community Hospital RN Facility Bargaining Council

**From:** James Moy  
**To:** "Ellis, Jan"; "doncarmody@bellsouth.net"  
**Cc:** John Borsos  
**Subject:** Demand to Bargain and Information Request Re Support Staffing, Meal/Break Coverage, Rounding, Callback Pay  
**Date:** Monday, June 16, 2014 2:28:00 PM

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Jan,

Please accept this letter as the Union's demand to bargain over the following changes to past practice:

- 1 - Reduction in Intensive Care Unit Telemetry Tech support personnel
- 2 – Reduction in Medical Surgical Support Personnel
- 3 - Reduction of Meal/Break MS RN coverage
- 4 – Introduction of patient rounding by non-clinical personnel
- 5 – New practice of denying RNs Callback Pay if an RN is called back to work within two hours of being placed on call

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

- 1 – Policy, including staffing matrix or other tool used to determine ICU Tele Tech and MS clinical support personnel staffing levels, and MS Break relief.
- 2 – Actual staffing logs, including patient census and acuity, since August 2013 for ICU Tele Tech, MS clinical support personnel, and MS RN staffing.
- 3 – Any communication to employees of among management regarding the above matters.
- 4 - Policy concerning patient rounding by non-clinical personnel including but not limited to:
  - o Manuals, presentations, RN internal management educational materials regarding the Community Cares Program
  - o Any and all Leader Weekly Wrap Up Reports
  - o Any and all "Because I CARE" Leader Rounding Reports
  - o Any other communication to RNs or among management regarding the above mentioned matters.
- 5 - Records of any RN disciplines or counseling resulting from rounding by non-clinical personnel
- 6 – Policy Regarding Callback Pay.
- 7 – Records of all RNs denied callback pay due to the implementation of the new Call Back Policy, including the number of hours and total pay denied.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing

the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or [jmoy@calnurses.org](mailto:jmoy@calnurses.org).

Sincerely,

James Moy

California Nurses Association / National Nurses United  
Organizer  
225 W. Broadway, Suite 500  
Glendale, CA 91204  
818.637.7121 – Office  
818.433.2119 – Cell  
818.240.8336 - Fax

**I have endorsed and support The Robin Hood Tax on Wall Street. Please support this campaign:**

Get more info at the Campaign web site: [www.robinhoodtax.org](http://www.robinhoodtax.org)

Join the RHT Twitter campaign at: @RobinHoodTax

Like the Robin Hood Tax on Wall Street Facebook page at: [goo.gl/rHKDxz](https://www.facebook.com/rHKDxz)

Endorse and Volunteer for the Robin Hood Tax on Wall street at: [goo.gl/aJBzmB](https://www.facebook.com/rHKDxz)

The time has come for a tax on Wall Street – Help Spread the Word!

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5b

From: James Moy  
 To: "Ellis, Jan"  
 Cc: John Borsos; "Camp, Daniel"; "Donna Smith2@chs.net"; Michelle Mahon; Mike Ziemer (mlipe@san.rr.com); Mary Moon (memoon231@yahoo.com); Amal Museitef (amalmuse12@gmail.com)  
 Subject: Demand to Bargain/Information Request Re: CPOE  
 Date: Thursday, July 24, 2014 6:25:00 PM

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Jan,

Please accept this letter as the Union's demand to bargain over the following changes to past practice at both Barstow Community Hospital and Fallbrook Hospital:

1 – Implementation of Computer Physician Order Entry system.

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

**CPOE System and Decision Making Process**

1. The brand, version and other specifications of the Computer Physician Order Entry (CPOE) system implemented at Barstow Community Hospital and Fallbrook Hospital.
2. The alternatives to CPOE, or to other CPOE brands/systems/vendors considered, and the rationale why CPOE, and this CPOE system, was selected.
3. A copy of the contract between CHS and CPOE vender for services and its application to Barstow Community Hospital and Fallbrook Hospital.
4. The amount of money paid to the CPOE vender to date, and projected future payments.
5. A copy of any and all documents provided by the CPOE that explain or describe the features of the various CPOE products purchased by Barstow Community Hospital and Fallbrook Hospital/CHS.
6. Any and all user guides, handbook, instruction manuals or similar document that provides use instructions for all CPOE products used at Barstow Community Hospital and Fallbrook Hospital.
7. Name(s) and Curriculum Vitae of people who are responsible for Health Information Technology at Barstow Community Hospital and Fallbrook Hospital.
8. The numerical designation of the Hub Barstow Community Hospital and Fallbrook Hospital belong to and the names of the hospitals and their representatives that included in that Hub.
9. Name(s) of people who are responsible for the oversight of Health Information Technology for CHS in this region or Hub, including the name(s) of the CPOE vender representatives, and/or other advisors or consultants participating in this project, including ongoing technical support.
10. The names of the hospitals and their representatives who participate in CHS system-wide calls related to the CPOE implementation.
11. Any and all written plans or policies for making changes to the CPOE system at Barstow Community Hospital and Fallbrook Hospital, or the CHS Region/Hub Barstow Community Hospital and Fallbrook Hospital/CHS belong to.

## Exhibit 2

12. Any document that reflects an evaluation of the CPOE system ensuring that data and information meet the needs of RN duty to comply with the CA Nurse Practice Act.
13. The name of the person who is responsible for ensuring that documentation in the CPOE system is designed to facilitate nursing practice.
14. A copy of response sent to CMS related to Stage 1 Meaningful Use Attestation for both Medicare and Medicaid.

#### **Implementation and Training**

15. Date of planned implementation of CPOE system at each Hospital
16. The names of individuals who are accountable for oversight of safe transition to CPOE.
17. Any timeline which details the roll-out of the CPOE and/or additional phases of the CPOE system at Barstow Community Hospital and Fallbrook Hospital.
18. Any and all educational material related to the CPOE system or details the training component of the implementation of the CPOE system for registered nurses.
19. The schedule the Employer provided, including provision of relief, for the training of registered nurses on the CPOE, and the ongoing requirements of additional staff time allocated for documentation as a result of the change to CPOE.
20. The process each hospital followed to determine the computer competencies of registered nurses, both for the CPOE implementation and the previous transition to the currently operating other EHR systems in each hospital.
21. The training that each individual RN was provided, including the times, dates, additional "skills labs" offered, during the most recent changes to EHR systems other than CPOE in each hospital.
22. The assessment criteria, and individual assessments of each RN's training in both the CPOE implementation and the transition to the currently operating other EHR systems in each hospital.
23. Past or planned additional training for individual RNs based on those assessments.
24. Date of planned pre-flight testing of the CPOE system and person responsible for overseeing this testing.
25. Any changes in employee policies related to performance as a result of the implementation of the CPOE system.
26. Documentation of the additional training provided to nurses who may float beyond their regularly-assigned unit.
27. A list of the nursing departments that decided the training needs were either greater than or less than the training recommended by the CPOE vender, and the justification for the difference.
28. The names of "Super User" registered nurses as determined by Barstow Community Hospital and Fallbrook Hospital.
29. The method by which the "Super Users" were selected.
30. The additional training provided to "Super Users," including the assessment criteria, individual assessments of each RN "Super User," and past or planned additional training based on those assessments.
31. Minutes of any meetings of the "Super Users" from their inception to the present.
32. The names of any RN who have been counseled, placed on a performance improvement plan or discipline or who have retired because of alleged performance issues related to usage of the CPOE system.

**Evaluation and Troubleshooting**

33. A copy of contracts that describe service plans, technology support or similar arrangement between Barstow Community Hospital and Fallbrook Hospital/CHS and the CPOE vender.
34. A copy of the down time plan for providing care during outages of CPOE.
35. A list of any and all quality measures that are being collected and evaluated using the CPOE system at Barstow Community Hospital and Fallbrook Hospital.
36. A list of benchmarks of nursing care which are being evaluated through the use of the CPOE system. Please include the detail level of the information being collected (i.e. System level, Unit level, provider level).
37. A description of which method is being used to evaluate the safety of the CPOE system at Barstow Community Hospital and Fallbrook Hospital, should any exist.
38. Any document that describes the facility plan for abiding by the SAFER guidelines for electronic health records issued by the Office of the National Coordinator of Health IT.
39. The method RNs use to report and documenting an error or problem with the CPOE system and a log of those submissions.
40. The mechanism for reporting back to RNs on the progress of a reported problem.
41. The method by which the Employer evaluates the adverse events that have been captured by the reporting method.
42. A copy of the Enhancement Requests that have been submitted to CPOE/CHS
43. A list of the Enhancement Requests that been denied by CPOE/CHS and the reason for the denial
44. A list of the Enhancement requests that been accepted and the date by which the enhancement request has been implemented
45. The structure of review of Enhancement Requests at the facility, HUB, and system level as well as the review process between CHS and the CPOE vender.

**Interactions with other EHM Systems**

46. The Employer's evaluation of the compatibility of the CPOE system with each of the other currently active EHR systems in the hospitals.
47. Any documentation that provides details of the changes to the existing EHR system as a result of the change to CPOE.
48. The Employer's evaluation of the compatibility of the CPOE system with Cerner EHR, when that system is implemented in the hospitals.
49. The timeline for the implementation of Cerner in the hospitals.
50. Copies of the training modules and training schedules proposed by the Employer related to the Cerner system implementation and Cerner's interaction with the CPOE system.
51. Any and all pharmacy policies and procedures related to the implementation of CPOE.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or [jmoy@calnurses.org](mailto:jmoy@calnurses.org).

(6)

**Evaluation and Troubleshooting**

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35. A list of any and all quality measures that are being collected and evaluated using the CPOE system at Barstow Community Hospital and Fallbrook Hospital.
36. A list of benchmarks of nursing care which are being evaluated through the use of the CPOE system. Please include the detail level of the information being collected (i.e. System level, Unit level, provider level).
37. A description of which method is being used to evaluate the safety of the CPOE system at Barstow Community Hospital and Fallbrook Hospital, should any exist.
38. Any document that describes the facility plan for abiding by the SAFER guidelines for electronic health records issued by the Office of the National Coordinator of Health IT.
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**Interactions with other EHM Systems**

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49. The timeline for the implementation of Cerner in the hospitals.
50. Copies of the training modules and training schedules proposed by the Employer related to the Cerner system implementation and Cerner's interaction with the CPOE system.
51. Any and all pharmacy policies and procedures related to the implementation of CPOE.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or [jmoy@calnurses.org](mailto:jmoy@calnurses.org).



6

U-7 M  
11/8/95

8/2/14

Mr. Camp:

Please accept this letter as the Union's demand to bargain over the elimination of the weekday Day Shift House Supervisors at Barstow Community Hospital.

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

- 1 – Records of personnel assigned to meal and break coverage, including the unit to which they were assigned, for day shift weekdays from April 1, 2014 through Aug 1, 2014.
- 2 – RN license information for personnel assigned to meal and break coverage on day shift weekdays from April 1, 2014 through Aug 1, 2014.
- 3 – Records of unit-specific competencies of personnel assigned to meal and break coverage on day shift weekdays from April 1, 2014 through Aug 1, 2014.

This list is not exhaustive and may be supplemented.

Sincerely,

James Moy

Organizer, California Nurses Association

Cc: Jan Ellis, CHS HR

John Borsos, CNA/NNU

**Exhibit 2**

U-7M  
1/8/15

From: James Moy  
To: Donna\_Smith2@chs.net; Jan\_Ellis (Jan\_ellis@chs.net); Jeana\_Christensen (Jeana\_Christensen@CHS.net)  
Cc: Vanessa\_Sylvester  
Subject: BCH Vacation and Sick Time Demand to Bargain / Info Request  
Date: Wednesday, November 26, 2014 11:44:27 AM

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Jan, Jeana, and Donna,

Please accept this letter as the Union's demand to bargain over the following changes to past practice at BCH:

1 - Changes to sick and vacation time usage policies

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1 - BCH's current policies regarding sick and vacation time, including but not limited to timelines for submission of requests, order in which requests are to be granted, doctor's note requirements, and supervisor's

2 - Records of vacation requests for vacation days from September 2014 - Feb 2015, including but not limited to the requests themselves, communication between RNs and Management regarding requests, and the date when the request were granted or denied. *Jan 8, 2015*

3 - Records of sick time and FMLA leaves from Aug 2014 - ~~Nov 26, 2014~~ *Jan 8, 2015*, including including but not limited to the requests themselves, communication between RNs and Management regarding requests, and the date when the request were granted or denied and appropriately redacted doctor's notes.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or jmoy@calnurses.org.

James Moy

**From:** James Moy  
**To:** James Moy; "Jan Ellis (Jan\_ellis@chs.net)"; "Jeana Christensen (Jeana\_Christensen@CHS.net)"  
**Cc:** Vanessa Sylvester; Nicole Daro  
**Subject:** BCH Katherine Painter Termination Demand to Bargain and Information Request  
**Date:** Tuesday, January 20, 2015 4:14:00 PM

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Jan and Jeana,

Please accept this letter as the Union's demand to bargain over the recent termination of BCH ER RN Katherine Painter.

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1. Ms. Painter's personnel file.
2. Any and all records of discipline or counseling of Ms. Painter including written discipline forms, records of verbal investigatory or discipline/counseling meetings, and internal correspondence related to the discipline/counseling.
3. The names, supporting material and copies of the disciplinary forms of other employees who were disciplined for the same offense(s), or disciplined due to the same incidents as those alleged against Ms. Painter.
4. All the information that the employer has relied upon to determine that discipline is warranted for Ms. Painter.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or [jmoy@calnurses.org](mailto:jmoy@calnurses.org).

James Moy

California Nurses Association / National Nurses United  
Organizer  
225 W. Broadway, Suite 500  
Glendale, CA 91204  
818.637.7121 – Office  
818.433.2119 – Cell

**From:** James Moy  
**To:** Michelle Miller  
**Cc:** Jan Ellis; Vanessa Sylvester; Jeana Christensen  
**Subject:** RN Referral and Bonus Program Demand to Bargain and Information Request  
**Date:** Friday, August 14, 2015 12:29:20 PM

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Hi Michelle,

Please accept this letter as the Union's demand to bargain over unilateral imposition of the following change in policy:

1- RN Signing and referral bonuses.

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

- 1- Any communication to RNs, among CHS management or to outside entities regarding the signing and referral bonuses
- 2- An account of the reasoning behind management's decision to institute the signing and referral bonuses, including but not limited to estimates of RN turnover at BCH, financial analysis of the viability of the program, and studies of signing and referral programs at other hospitals.
- 3- A copy of the written proposal referred to, but never sent, regarding the bonuses at our most recent bargaining session.
- 4- Copies of any referrals made by RNs or other staff under the program, and any associated documents including but not limited to management analysis of referrals, any and all documentation regarding RNs hired or considered for hire under the program.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or [jmoy@calnurses.org](mailto:jmoy@calnurses.org).

Thank you.

James Moy

Sent from my iPhone



*A Voice for Nurses. A Vision for Healthcare.*



OAKLAND  
2000 Franklin Street  
Oakland CA 94612  
phone 510-273-2200  
fax 510-663-1625

VIA FACSIMILE (813-724-3215), E-MAIL ([jeri.Gilbert@chs.net](mailto:jeri.Gilbert@chs.net)) and Certified Mail

December 6, 2013

Jeri Gilbert, Director of Human Resources  
Watsonville Community Hospital/CHS  
75 Nielson Street  
Watsonville, CA 95076

**RE: Information Request – Agency Contract**

Dear Ms. Gilbert:

This is in response to Watsonville Community Hospital/ CHS' letter of December 4, 2013, advising nurses that because they, "failed to report to work" during the California Nurses Association's lawfully noticed one-day strike, which commenced at 6:45 AM on Tuesday, December 3, 2013 and concluded at 6:44 AM December 4, that it has "taken the requisite measure to engage a qualified worker to temporarily replace you."

CNA notified the Employer that all RNs would be on strike via the 10-day notice to the acute care facility. Nurses had no obligation to advise Watsonville Community Hospital/CHS of their intention to honor the strike, nor were they obligated to report to work during the strike period. Yet the communication issued to Nurses following the conclusion of the strike advised that a lockout was being imposed because, "you failed to report to work to perform your scheduled, assigned duties due to participation in strike related activities. "

In your letter you claim that the contract with the agency requires Watsonville Community Hospital/CHS to lock nurses out, "Due to the fact that we must fulfill certain obligations we have to the engagement of the person who has replaced you,

temporarily, please report to your next scheduled shift after 6:45 AM on Friday, 12/6/2013." Ostensibly in reliance on this lockout period, you appear to have suspended various existing terms and conditions of RN employment, including those covering Staffing and Call Off procedures (without having obtained our prior consent or agreement, of course.)

In order to evaluate the Employer's claim that its "obligations" to temporary replacements required it to lock out RNs and unilaterally suspend important contractual guarantees, I am requesting that you provide the following information immediately:

1. A true, correct and complete copy of any contract or other agreement with the temporary replacements or staffing agencies referred to in paragraph 2 of your December 4, 2013 letter.
2. Any and all documents relating in any way to the negotiation of the agreement described in Item 1, above, including but not limited to correspondence, notes, emails, drafts, proposals, counterproposals, memoranda and any other writing between employees, agents and/or representatives of Watsonville Community Hospital, Community Health System, and the temporary staffing agency with whom the agreement was made.
3. True and correct copies of any and all advertising by Watsonville Community Hospital and/or Community Health System, and/or any person or entity with whom it has contracted for purposes of soliciting temporary replacement workers to cover for the strike noticed to take place on December 3, 2013 and/or the lockout which commenced on December 4, 2013.
4. Any and all documents relating to the advertising described immediately above in Item 3, including but not limited to correspondence, emails, notes, invoices and any other writing relating to the procurement or placement of said advertising.
5. Copies of any and all contracts Watsonville Community Hospital and/or Community Health System has entered into at any time within the past three years with any temporary employment agency or nurse registry for the provision of Registered Nursing services at its hospital in Watsonville.
6. In your letter, you claim that the temporary replacement workers are "qualified" to perform bargaining unit work. As you know, the only Registered Nurses who may provide nursing services in this state are those possessing a valid California RN license. The Union has a right to verify your representations to determine

whether the Employer has improperly engaged unqualified staff to perform bargaining unit work. Therefore, for each Registered Nurse scheduled to serve as a temporary replacement for locked out/striking workers at any time during the period of December 3, 2013 through December 10, 2013, provide the following information, as it becomes available:

- (a) Name;
- (b) State of residence;
- (c) State(s) which have issued Registered Nursing license to said Registered Nurse;
- (d) A list of all nursing related certifications;
- (e) Any and all documents reflecting past service by the individual as a temporary strike replacement worker at any location; and
- (f) A true and correct copy of the individual's application for temporary employment during the lockout/work stoppage scheduled for December 3, 2013 through December 7, 2013, whether or not that application was directly with Watsonville Community Hospital, or an agent, representative, agency or entity acting on behalf of the employer.

7. Any and all documents reflecting an investigation and/or inquiry by Community Health System/Watsonville Community Hospital of any and all temporary staffing agencies with whom it has consulted for purposes of procuring strike replacements at any time during November/December 2013, concerning such agencies' record of placing any employee for employment with any employer in any strike and/or lockout at any location at any time in the past, including but not limited to the number of times the entity has offered to place persons in temporary employment in strike and/or lockout situations.

8. With respect to the December 4 letter, please provide the following:

- (a) The name(s) of the author(s)
- (b) The date(s) the Hospital met to develop it
- (c) The names of participants in those development meetings

9. To better understand the working conditions inside the Hospital during the strike and lockout, the Union requests the following:

- (a) The names of bargaining unit Nurses scheduled to work December 3, 2013, separately by each patient unit or hospital department.

(b) The patient census for December 3, 2013, separately by each patient unit or hospital department.

(c) The number of replacement RNs who worked at the hospital on December 3, 2013, separately by patient unit or hospital department.

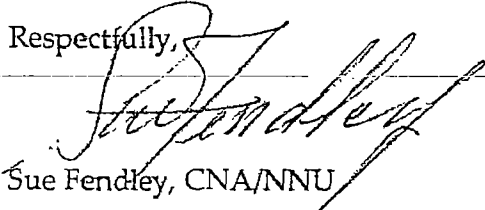
(d) The names of bargaining unit Nurses schedule to work December 4, 5, and 6, 2013, separately by each patient unit or hospital department.

(e) The patient census for December 4, 5, and 6, 2013, separately by each patient unit or hospital department.

(f) The number of replacement RNs who worked at the hospital on December 4, 5, and/or 6, 2013, separately by each patient unit or hospital department.

Given the current Lockout status, I would very much appreciate you arranging to provide the above-requested information by Tuesday, December 10, 2013. If, for any reason, all of the information cannot be produced by then, please produce all information that is readily available and advice when the remaining information will be produced and the reason(s) for the delay.

Respectfully,

  
Sue Fendley, CNA/NNU

Lead Labor Representative

CC: Tim Thomas, RN, Chief Nurse Representative

Joe Lindsay, Division Director Public Sector

Fernando Losada, Northern CA Collective Bargaining Director

Damian Tryon, CNA/NNU Labor Representative



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

|   |                  |
|---|------------------|
| Affinity Hospital, LLC d/b/a Grandview)   |                  |
| Medical Center, and Crestwood)            | Civil Action No. |
| Healthcare, L.P. d/b/a Crestwood Medical) |                  |
| Center,                                   | )                |
|   | )                |
| Plaintiffs,                               | )                |
|   | )                |
| v.  | )                |
|   | )                |
| NATIONAL LABOR RELATIONS                  | )                |
| BOARD                                     | )                |
|   | )                |
| and                                       | )                |
|   | )                |
| MARK GASTON PEARCE, in his                | )                |
| official capacity as Chairman of the      | )                |
| National Labor Relations Board,           | )                |
|   | )                |
| Defendants.                               |                  |

**COMPLAINT**

Plaintiffs Affinity Hospital, LLC d/b/a Grandview Medical Center (“Grandview”), and Crestwood Healthcare, L.P. d/b/a Crestwood Medical Center (“Crestwood”) (collectively, “Plaintiffs”), for their Complaint for Immediate Injunctive and Declaratory Relief against Defendant National Labor Relations Board (“the Labor Board”) and its Chairman, Mark Gaston Pearce, in his official capacity, allege as follows:

**NATURE OF ACTION**

## Exhibit 3

1. This is a lawsuit for an immediate injunction and for declaratory relief because the Labor Board has set an administrative hearing to commence on February 29, 2016 in Consolidated Case No. 08-CA-117890 (the “Hearing”). In the Hearing, based on the Labor Board’s Consolidated Complaint (“Board Complaint, attached as Exhibit A”), the Labor Board seeks far-reaching corporate-wide relief that would apply to corporate entities which are not parties to the Hearing, have received no notice of the Hearing, and have received no opportunity to be heard regarding the allegations set forth therein.

2. Grandview and Crestwood, by virtue of their affiliations with CHS, Inc. (“CHSI”) and CHSPSC, LLC (“CHSPSC”), along with hundreds of entities nationwide (“Unnamed Entities”), are the entities that have not been named as Respondents in the Board Complaint, but against whom such an order has effectively been sought. As a result, the Hearing and all attendant administrative proceedings represent a violation of Plaintiffs’ rights and the rights of all Unnamed Entities under the National Labor Relations Act (“the Labor Act”), the Administrative Procedure Act (“the APA”), as well as due process rights guaranteed under the Fifth Amendment to the United States Constitution.

### **JURISDICTION AND VENUE**

3. This is an action for a declaratory judgment, pursuant to 28 U.S.C. § 2201, for the purpose of determining and resolving a question of actual controversy between the parties, and for injunctive relief.

4. In addition, this Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under, and concerns, provisions of the federal Labor Act, the federal APA and the Due Process Clause of the Fifth Amendment to the United States Constitution.

5. Further, 5 U.S.C. § 702 expressly permits requests for injunctive relief from actions of a federal governmental agency such as the NLRB.

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(c) & (e) because Grandview's principal place of business is in Southern Division of the Northern District of Alabama.

### **THE PARTIES**

7. Plaintiff Affinity Hospital, LLC d/b/a Grandview Medical Center, is a wholly owned subsidiary of Affinity Health Systems, LLC, is a wholly owned subsidiary of Affinity Health Systems, LLC, which is a wholly owned subsidiary of Birmingham Holdings, LLC, which is a wholly owned subsidiary of Tennyson Holdings, LLC, which is a wholly owned subsidiary of Triad Healthcare, LLC,

# Exhibit 3

which is a wholly owned subsidiary of HMA-TRI Holdings, LLC, which is a wholly owned subsidiary of CHS/Community Health Systems, Inc., which is a wholly owned subsidiary of Community Health Systems, Inc. Grandview's principal place of business is located at 3690 Grandview Parkway, Birmingham, Alabama 35243.

8. Plaintiff Crestwood Healthcare L.P. d/b/a Crestwood Medical Center, is a wholly owned subsidiary of Crestwood Hospital, LLC, which is a wholly owned subsidiary of Triad Holdings III, LLC, which is a wholly owned subsidiary of Triad Holdings IV, LLC, which is a wholly owned subsidiary of Tennyson Holdings, LLC, which is a wholly owned subsidiary of Triad Healthcare, LLC, which is a wholly owned subsidiary of HMA-TRI Holdings, LLC, which is a wholly owned subsidiary of CHS/Community Health Systems, Inc., which is a wholly owned subsidiary of Community Health Systems, Inc. Crestwood's principal place of business is located at 1 Hospital Drive, Huntsville, Alabama 35801.

9. Defendant National Labor Relations Board is a government agency that investigates and prosecutes unfair labor practices, and it has initiated a Complaint in Consolidated Case No. 08-CA-117890 against CHSI-affiliated Respondents. (*See* Exhibit A).

10. Defendant Mark Gaston Pearce is the Chairman of the National Labor Relations Board as of the date of this filing.

## **UNDERLYING FACTS**

11. In the Board Complaint, the Labor Board's Region 8, through its Regional Director and Counsel for General Counsel, alleges that seven separately incorporated acute care hospitals ("Respondent Hospitals") engaged in unfair labor practices under the Labor Act. The Board Complaint also names as Respondents CHSPSC, a separately incorporated healthcare management service company located in the Nashville area, along with CHSI, also a separately incorporated company located in the Nashville area (collectively "the named Respondents"). (*See* Exhibit A). CHSI is only a holding company and its stock is publicly traded under the symbol "CYH." CHSPSC provides management services to Respondent Hospitals.

12. Despite the fact that neither Plaintiffs nor any of the Unnamed Entities have allegedly engaged in wrongdoing, at its Hearing, the Labor Board seeks a corporate-wide order against CHSI and CHSPSC, wherever they are joint or single employers with other entities, thus directly affecting all such entities, including entities which have not been named as Respondents in the Board Complaint. Plaintiffs and many of the Unnamed Entities are associated with CHSI via publicly traded stock. Plaintiffs and many of the Unnamed Entities are associated with CHSPSC via their receipt of management services provided by CHSPSC. The Labor Board seeks to link all such entities together with CHSI and CHSPSC, for remedial

purposes, despite having failed to name those entities as Respondents in the Board Complaint.

13. The Labor Board's Counsel for the General Counsel seeks the following remedy:

a broad remedial order applicable to **Respondent CHSI, Respondent CHSPSC**, Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Kentucky River and Respondent Watsonville, **on a corporate-wide basis, in any and all locations** where they are an employer within the meaning of Section 2(2) of the Act, as part of **a single integrated enterprise, as joint employers, or otherwise**, to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act in the manner alleged, or in any other manner, together with **any and all relief as may be just and proper** to remedy the unfair labor practices alleged.

(Board Complaint at 111–12) (emphasis added).

14. Because joint or single employer relationships necessarily involve two or more entities, such an order will purportedly require Plaintiffs and the Unnamed Entities in an alleged single integrated enterprise with CHSI and/or CHSPSC, as well as Plaintiffs and the Unnamed Entities deemed part of a single or joint employer relationship with CHSI and/or CHSPSC, to cease and desist from all future violations of the Labor Act. Such an order will necessarily subject personnel decisions and other actions by the Unnamed Entities to District Court scrutiny and reversal in contempt actions.

**Exhibit 3**

15. The Board Complaint lists a wide range of other remedies available and sought by the Labor Board, such as notice posting, reading and mailing notices to employees, bargaining orders, and monetary liability. (Board Complaint at 111–116). Because the Board seeks to apply a broad-based cease and desist order and any and all proper relief to CHSI and CHSPSC, wherever they are single or joint employers, the Board necessarily seeks to apply such orders and relief to Plaintiffs and the Unnamed Entities. If CHSI and CHSPSC, for example, must assure employee notice posting and employee notice reading “corporate-wide,” the Labor Board will require Plaintiffs and the Unnamed Entities who employ their workforces to submit to such remedies without a hearing, notwithstanding that such requirement would constitute clear violations of the Unnamed Entities’ property and due process rights. In addition, different entities deemed single employers have joint and several monetary liability and compliance responsibility under Board law for one another’s actions. *Emsing’s Supermarket, Inc.*, 294 NLRB 302 (1987).

16. Unnamed Entities related to CHSI or served by CHSPSC include, but are not limited to, acute care hospitals, physician practices, clinics, real estate operations, home health operations, hospice providers, and ancillary service companies. While CHSI employs no one, its partly or wholly owned, direct or indirect subsidiaries, and related entities have approximately 135,000 employees located across the nation. These entities have separate corporate and legal status,

separate local boards, separate executive leaders on-site, and separate local workforces, with different business segments, different purposes, different employee complements, different minority owners, and many other factors of separation. The Labor Board has nevertheless attempted to plead a Board Complaint of nationwide scope, as a “single integrated enterprise,” without naming as respondents the corporate entities that allegedly comprise the “single integrated enterprise.”

17. CHSI also currently owns, indirectly, consulting companies which assist hundreds of additional third party healthcare entities across the nation, including government entities. These consultants assist on a wide range of typical consulting issues, including but not limited to: vendors; materials management; staffing; employee benefits; operations analysis; training; safety; and healthcare practices. All such entities represent putative joint employers, potentially bound to the remedial order through their CHSI association, but no such entity has been named as a Respondent in the Board Complaint.

18. Plaintiffs and the Unnamed Entities do not cede due process rights simply because an entity related to them has been the subject of a single employer allegation. *See N. Mont. Health Care Ctr. v. NLRB*, 178 F.3d 1089, 1098 (9th Cir. 1999). The Labor Board’s attempt to hold a hearing that seeks such an order, binding entities as single or joint employers without naming them, violates rights under the



Labor Act, the APA, and rights to due process under the Fifth Amendment to the United States Constitution.

19. The necessity of a Charge, Complaint, and appeals process are prescribed in the Labor Act itself. 29 U.S.C. § 160 (b)–(f). The APA sets forth similar requirements relating to notice and the opportunity to be heard. 5 U.S.C. § 554(b). In addition, the Labor Board has no power to take action absent an unfair labor practice charge having been filed by or on behalf of employees of the Unnamed Entities. Any action to the contrary may be enjoined in federal district court. *Chamber of Commerce of the United States v. NLRB*, 721 F.3d 152 (4th Cir. 2014).

20. Fundamental to our legal system is the requirement that before a judgment or enforceable order is entered against a person, some form of pleading, giving notice of the charges, must be served upon that person. 29 U.S.C. § 160(h). Unfair labor practice proceedings begin with service of a complaint upon the party charged. The complaint must contain notice of the charges and of a hearing to determine them. *See NLRB v. Chelsea Labs., Inc.*, 825 F.2d 680, 682 (2d Cir. 1987); *NLRB v. Coca Cola Bottling Co.*, 811 F.2d 82, 87 (2d Cir. 1987). Notice “must inform the respondent of the acts forming the basis of the complaint.” *NLRB v. H.P. Townsend Mfg. Co.*, 101 F.3d 292, 294 (2d Cir. 1996).

21. “Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the

meaning of the Due Process Clause of the Fifth . . . Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

22. Business organizations, like individuals, possess due process interests. *See Old Dominion Dairy Prods., Inc. v. Sec’y of Def.*, 631 F.2d 953 (1980). These liberty interests mandate due process. “As a general proposition, the NLRB may not find that an unfair practice exists without first affording the alleged violator notice and an opportunity for a hearing. This requirement is primarily a matter of due process.” *Coca Cola Bottling Co.*, 811 F.2d at 87.

23. Plaintiffs and the Unnamed Entities are not required to pursue administrative exhaustion because they have no “meaningful and adequate opportunity for judicial review.” *Saginaw Chippewa Indian Tribe v. NLRB*, 838 F. Supp. 2d 598, 603 (E.D. Mich. 2011) (citing *Bd. of Governors of Fed. Reserve Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 43 (1991)). Persons impacted by Labor Board actions are not required to exhaust all administrative options upon “a showing that the Board acted in excess of its delegated powers *and* that the aggrieved party would be ‘wholly deprived’ of its statutory rights.” *Id.* (quoting *Detroit Newspaper Agency v. NLRB*, 286 F.3d 391, 397 (6th Cir. 2002)).

24. In *Leedom v. Kyne*, 358 U.S. 184, 190 (1958), the Supreme Court found that “a litigant may bypass available administrative procedures where there is a readily observable usurpation of power not granted to the agency by Congress.” *Detroit Newspaper Agency*, 286 F.3d at 397 (emphasis added). To establish that the administrative exhaustion requirement does not apply, [an aggrieved party] must demonstrate that it has no “meaningful and adequate opportunity for judicial review.” *Saginaw*, 838 F. Supp. 2d at 603 (citing *MCorp*, 502 U.S. at 43).

25. Through the Hearing, the Labor Board seeks to hold Plaintiffs and Unnamed Entities captive to a future corporate-wide order without affording them a chance to defend themselves at the hearing. Plaintiffs and the Unnamed Entities will not be presenting evidence on single or joint employer issues, nor will they be presenting evidence on the underlying alleged unfair labor practices. They will have no way to recapture these irrevocably lost rights of defense and participation, through any administrative process or through an appeal, for no administrative record will exist to support such an appeal. The Labor Board has thus violated statutory, regulatory, and Constitutional rights under the *Leedom* exception to administrative exhaustion.

26. The Labor Board may not apply its orders to a party not named as a Respondent. *N. Mont. Health Care Ctr.*, 178 F.3d at 1098. Accordingly, the Labor Board must name as Respondents all entities alleged to be parties to a joint or single

employer relationship. To adjudicate a claim, issue an order, and seek to enforce it against an Unnamed Entity would plainly violate due process. *Nelson v. Adams USA*, 120 S. Ct. 1579 (2000); *H.P. Townsend Mfg. Co.*, 101 F.3d at 295–96 (even if party knew of allegations of alter ego status and of effort to include them in the proceedings, formal service of complaint was still required).

### **FIRST CLAIM FOR RELIEF**

#### **Declaratory Judgment**

#### **Violation of Statutory Rights under the Labor Act and the APA**

27. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 to 26 above as though fully set forth.

28. An actual controversy has arisen and now exists between and among the Labor Board, Plaintiffs, and the Unnamed Entities concerning the Labor Board’s convening and holding of the Hearing in contravention of statutory and regulatory rights to notice and a hearing under the APA and the Labor Act.

29. For the reasons above, Plaintiffs seek the following declaratory judgment:

(A) That through the Hearing, the Labor Board seeks a far-reaching corporate-wide order which it seeks to apply to Plaintiffs and Unnamed Entities by virtue of their associations with CHSI and CHSPSC.

## Exhibit 3

(B) That the Labor Board seeks such an order despite failing to provide Plaintiffs and the Unnamed Entities notice or a hearing as statutorily required under the Labor Act and the APA.

(C) That due to the Labor Board's violations of the Labor Act and the APA, Plaintiffs and the Unnamed Entities did not receive formal notice of the Hearing and will not be provided a hearing before the imposition of any order sought by the Labor Board.

(D) That the Labor Board's failure to provide notice and a hearing to Plaintiffs and the Unnamed Entities as required under the APA and the Labor Act is an observable usurpation of power not granted to the agency by Congress.

(E) That Plaintiffs and the Unnamed Entities are not required to pursue administrative exhaustion because upon commencement of the hearing they have no "meaningful and adequate opportunity for judicial review." *Saginaw*, 838 F. Supp. 2d at 603 (citing *MCorp*, 502 U.S. at 43).

(F) That apart from this Federal District Court action, Plaintiffs and the Unnamed Entities have no adequate legal remedy.

(G) That the Hearing and related proceedings shall not proceed unless and until the Labor Board removes these legal infirmities.

### **SECOND CLAIM FOR RELIEF**

## **Exhibit 3**

### **Declaratory Judgment Violation of the Right to Due Process under the United States Constitution**

30. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 to 29 above as though fully set forth.

31. An actual controversy has arisen and now exists between and among the Defendants, Plaintiffs and Unnamed Entities concerning the Labor Board's convening and holding of the Hearing in contravention of Constitutional rights to due process as well as violations of the above-stated statutory rights.

32. For those reasons, Plaintiffs seek the following declaratory judgment:

(A) That through the Hearing, the Defendants seek a far-reaching corporate-wide order which it seeks to apply to Plaintiffs and Unnamed Entities by virtue of their associations with CHSI and CHSPSC.

(B) That Defendants seek such an order despite the Labor Board failing to provide Plaintiffs and the Unnamed Entities due process protection as mandated by the United States Constitution.

(C) That due to the above-stated denial of due process to Plaintiffs and the Unnamed Entities, they have not received formal notice of the Hearing and will not be provided a hearing before the imposition of any order sought by the Labor Board at the Hearing.

(D) That the Defendants' denial of due process to Plaintiffs and the Unnamed Entities as required under the Fifth Amendment to the United States

Constitution is an “observable usurpation of power not granted to the agency by Congress.” *Detroit Newspaper Agency*, 286 F.3d at 397.

(E) That Plaintiffs and the Unnamed Entities are not required to pursue administrative exhaustion because they have no “meaningful and adequate opportunity for judicial review.” *Saginaw*, 838 F. Supp. 2d at 603 (citing *MCorp*, 502 U.S. at 43).

(F) That apart from this Federal District Court action, Plaintiffs and the Unnamed Entities have no adequate legal remedy.

(G) That the Hearing and related proceedings shall not go forward unless and until these legal infirmities are removed.

### **THIRD CLAIM FOR RELIEF**

#### **Injunctive Relief**

#### **Violations of the Labor Act, APA, and Constitutional Due Process**

33. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 to 32 above as though fully set forth.

34. No adequate remedy at law exists for the Labor Board’s violations of the Labor Act, APA, and Constitutional due process.

35. Irreparable injury will occur if the Court does not order the Labor Board to refrain from commencing the Hearing and suspend its administrative proceedings until such time as the foregoing infirmities are removed from those proceedings.

## **Exhibit 3**

36. The injury to Plaintiffs and the Unnamed Entities, absent an injunction, outweighs the threatened injury to the Labor Board. The above-stated statutory violations and unconstitutional denials of due process outweigh any minor delay the Labor Board may experience while remedying the infirmities.

37. The injunction, if issued, would not be adverse to the public interest and would serve the public interest with respect to assuring due process and assuring the federal government's statutory compliance.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in its favor and to:

1. Issue a declaratory judgment against Defendants declaring that Plaintiffs and the Unnamed Entities have not been provided their statutory rights under the APA and the Labor Act with respect to the Hearing and that any judgment or final order arising from the Hearing shall not be binding on Plaintiffs and the Unnamed Entities;

2. Issue a declaratory judgment against Defendants declaring that Plaintiffs and the Unnamed Entities have been denied due process guaranteed to them under the Fifth and Amendment to the United States Constitution with respect to the Hearing, and with respect to §1983, and that any judgment or final order arising from the Hearing shall not be binding on them;



## Exhibit 3

3. Enjoin the Defendants, the individual members of the Labor Board in their official capacity, and any of the Labor Board's agents, officers, employees, or representatives from proceeding with the Hearing and any related administrative proceedings until the declaratory judgment sought by Plaintiffs has been fully adjudicated and until the above-stated infirmities are removed from the proceeding;

4. Award Plaintiffs their attorneys' fees, costs and such other relief as this Court may deem just or equitable.

Respectfully submitted,

s/ Joseph B. Mays, Jr.

---

Joseph B. Mays, Jr.

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Anne Knox Averitt

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### OF COUNSEL

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Michael E. Nitardy

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*Subject to Pro Hac Vice Admission*

**U.S. District Court  
Northern District of Alabama (Southern)  
CIVIL DOCKET FOR CASE #: 2:16-cv-00314-AKK**

Affinity Hospital LLC et al v. National Labor Relations Board et al  
Assigned to: Judge Abdul K Kallon  
Cause: 05:704 Labor Litigation

Date Filed: 02/24/2016  
Date Terminated: 02/29/2016  
Jury Demand: None  
Nature of Suit: 790 Labor: Other  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**Affinity Hospital LLC**  
*doing business as*  
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**Plaintiff**

**Crestwood Healthcare LP**  
*doing business as*  
Crestwood Medical Center

represented by **Anne Knox Averitt**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**John Thomas Richie**

(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Joseph B Mays , Jr**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**National Labor Relations Board**

represented by **Diana Orantes Embree**  
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**Dawn Laura Goldstein**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Mark Gaston Pearce**  
*in his official capacity as Chairman of the*  
*National Labor Relations Board*

represented by **Diana Orantes Embree**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Dawn Laura Goldstein**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Kevin James Hobson**

(See above for address)

*ATTORNEY TO BE NOTICED*

| Date Filed | #                         | Docket Text   |
|------------|---------------------------|---|
| 02/24/2016 | <a href="#"><u>1</u></a>  | COMPLAINT against National Labor Relations Board, Mark Gaston Pearce (Filing fee \$ 400 rec# B4601069146.), filed by Crestwood Healthcare LP, Affinity Hospital LLC. (Attachments: # <a href="#"><u>1</u></a> Exhibit A)(KAM, ) (Entered: 02/24/2016)   |
| 02/24/2016 | <a href="#"><u>2</u></a>  | NOTICE of Corporate Disclosure by Affinity Hospital LLC, Crestwood Healthcare LP (KAM, ) (Entered: 02/24/2016)  |
| 02/24/2016 | <a href="#"><u>3</u></a>  | MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by Affinity Hospital LLC, Crestwood Healthcare LP. (Attachments: # <a href="#"><u>1</u></a> Exhibit A, # <a href="#"><u>2</u></a> Exhibit B)(KAM, ) (Entered: 02/24/2016)   |
| 02/24/2016 | <a href="#"><u>4</u></a>  | MOTION Admission Pro Hac Vice <i>for Robert D. Hudson</i> by Affinity Hospital LLC, Crestwood Healthcare LP. (Attachments: # <a href="#"><u>1</u></a> Affidavit Affidavit of Robert D. Hudson) (Mays, Joseph) (Entered: 02/24/2016)   |
| 02/24/2016 |                           | NOTICE of Hearing on Motion <a href="#"><u>3</u></a> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction: Motion Hearing set for 2/26/2016 at 01:30 PM in Courtroom 4A of the Hugo L Black US Courthouse, Birmingham, AL before Judge Abdul K Kallon. (KSS) (Entered: 02/24/2016)  |
| 02/24/2016 | <a href="#"><u>5</u></a>  | Notice of Appearance as to Kevin Hobson by National Labor Relations Board, Mark Gaston Pearce. (Hobson, Kevin) Modified on 2/26/2016 (KSS). (Entered: 02/24/2016)   |
| 02/25/2016 | <a href="#"><u>6</u></a>  | NOTICE of Appearance by Diana Orantes Embree on behalf of All Defendants (Attachments: # <a href="#"><u>1</u></a> Affidavit Certificate of Service)(Embree, Diana) (Entered: 02/25/2016)  |
| 02/25/2016 | <a href="#"><u>7</u></a>  | NOTICE of Appearance by Kevin James Hobson on behalf of All Defendants (Attachments: # <a href="#"><u>1</u></a> Certificate of Service)(Hobson, Kevin) (Entered: 02/25/2016)  |
| 02/25/2016 | <a href="#"><u>8</u></a>  | NOTICE of Appearance by Dawn Laura Goldstein on behalf of All Defendants (Attachments: # <a href="#"><u>1</u></a> Exhibit Certificate of Service)(Goldstein, Dawn) (Entered: 02/25/2016)  |
| 02/26/2016 | <a href="#"><u>9</u></a>  | MOTION to Transfer Venue and Memorandum in Support filed by National Labor Relations Board. (Attachments: # <a href="#"><u>1</u></a> Exhibit Exh. 1-SEC filing, # <a href="#"><u>2</u></a> Exhibit Certificate of Service)(Goldstein, Dawn) Modified on 2/29/2016 (YMB). (Entered: 02/26/2016)  |
| 02/26/2016 | <a href="#"><u>10</u></a> | OPPOSITION to plffs' <a href="#"><u>3</u></a> MOTION for Temporary Restraining Order and Preliminary Injunction, filed by National Labor Relations Board, Mark Gaston Pearce. (Attachments: # <a href="#"><u>1</u></a> Exhibit Case Management Order 12-2-15, # <a href="#"><u>2</u></a> Exhibit Revised Case Management Order 1-28-16, # <a href="#"><u>3</u></a> Affidavit Affidavit of RD Allen Binstock, # <a href="#"><u>4</u></a> Affidavit Certificate of Service)(Embree, Diana) Modified on 2/29/2016 (YMB). (Entered: 02/26/2016)                   |
| 02/26/2016 | <a href="#"><u>11</u></a> | Summons Issued as to National Labor Relations Board, returned to plaintiff for service. (AVC) (Entered: 02/26/2016)   |
| 02/26/2016 |                           | Minute Entry for proceedings held before Judge Abdul K Kallon: Motion Hearing held on 2/26/2016. Counsel for NLRB present by telephone. Re: <a href="#"><u>3</u></a> MOTION for Temporary Restraining Order filed by Affinity Hospital LLC, Crestwood Healthcare LP DENIED in open court as stated on the record. <a href="#"><u>4</u></a> MOTION Admission Pro Hac Vice for Robert D. Hudson filed by Affinity Hospital LLC, Crestwood Healthcare LP GRANTED upon payment of fee as stated on the record. Plas' response to Motion to Transfer due 3/9/2016; |

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|            |                    | dfts' reply, if any due 3/16/2016. (Court Reporter Sabrina Lewis) (KSS, ) (Entered: 02/26/2016)  |
| 02/29/2016 | <a href="#">12</a> | NOTICE of Voluntary Dismissal by Affinity Hospital LLC, Crestwood Healthcare LP (Mays, Joseph) (Entered: 02/29/2016)   |
| 02/29/2016 | <a href="#">13</a> | ORDER that pursuant to plff's <a href="#">12</a> Notice of Dismissal, this matter is DISMISSED without prejudice. Dft's <a href="#">9</a> MOTION to Transfer Venue is MOOTED. Signed by Judge Abdul K Kallon on 2/29/2016. (YMB) (Entered: 02/29/2016) |

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| <b>Description:</b>    | Docket Report      | <b>Search Criteria:</b> | 2:16-cv-00314-AKK |
| <b>Billable Pages:</b> | 3                  | <b>Cost:</b>            | 0.30              |